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LEGAL UPDATE: Innab Salil & Ors V. Verve Suites Mont Kiara Management Corporation (2020) 6 MLRA

**FROM THE DESK
OF THE
PRESIDENT**

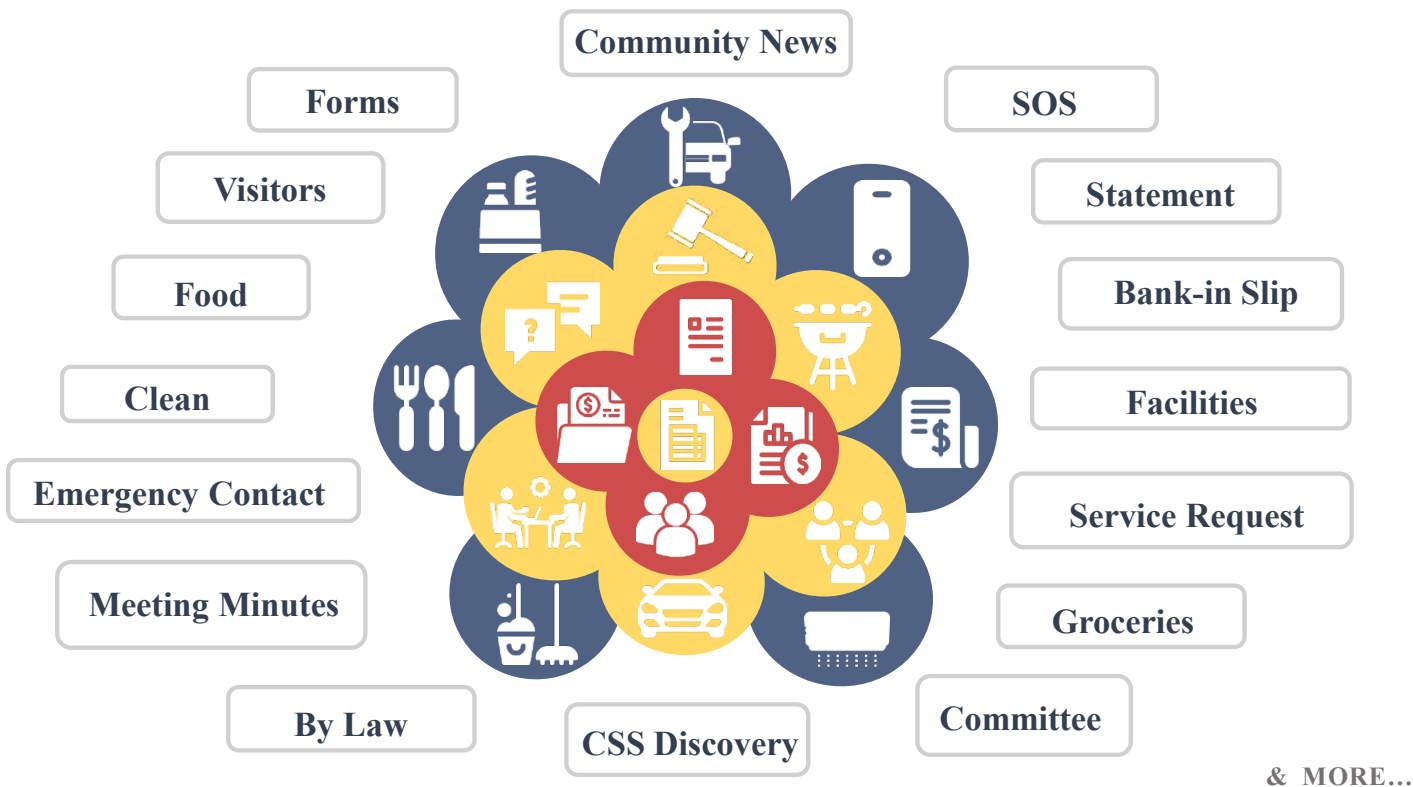
FEATURE

Damp Indoor Spaces and
Environmental Health

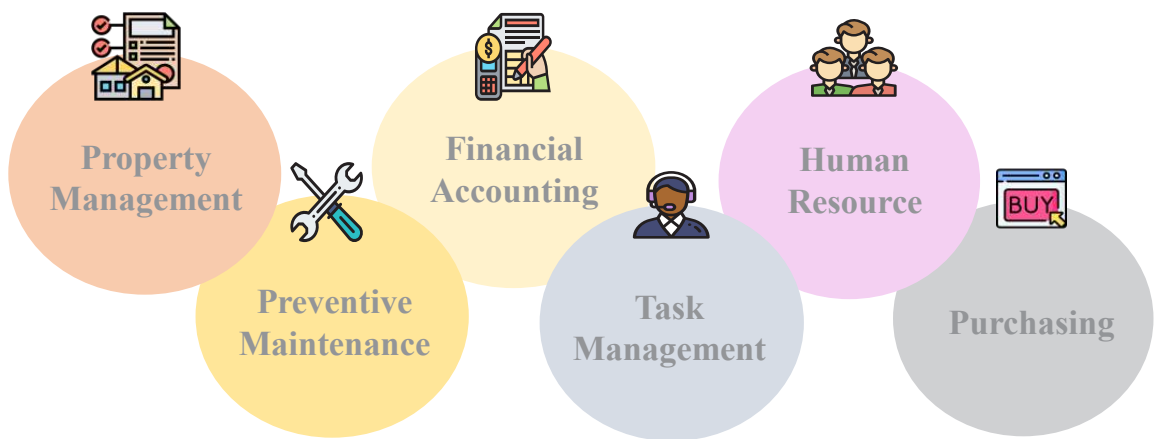
**PROPERTY PORTFOLIO
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Privatisation of AHP to Become
an Unlisted Reit

eCommunity [App & Web]



Property Management System



Visitor Management System (VMS)

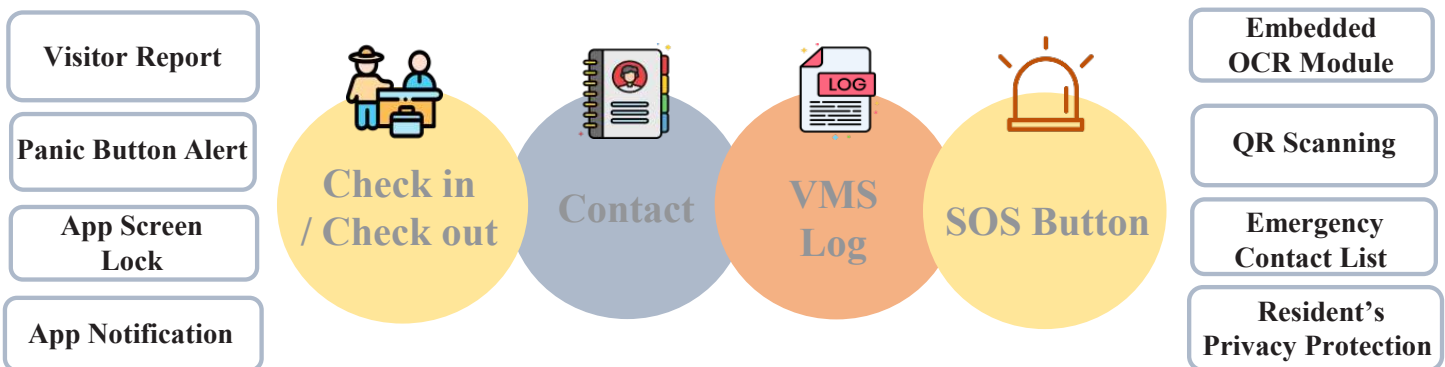


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NEW MEMBERSHIP LISTING

Welcome to the 4th Quarter 2020 issue of *The Property Manager*!

Year 2020 was for most of us *annus horribilis* for the global Covid-19 pandemic.

To round up 2020, the articles in this fourth quarterly issue cover several different topics from mould prevention in buildings, workplace design and productivity, property portfolio management and REIT, legal case update/summary and residential property overhang.

Indoor air quality, sick building syndrome, building related sickness and environmental health are associated with the dampness in buildings. Generally there is an inverse relationship between indoor air quality and level of dampness in spaces within a building. A technical paper reviewing the various guidelines on mould prevention strategies and mould remediation cleaning procedures is prepared by author Kuan You Wai.

The performance of an employee is related to productivity. Generally, it is acknowledged that the physical elements of workplace can influence satisfaction and implicate productivity. A comfortable workplace provides healthy, liveable and productive surroundings. It helps the workers to reduce stress and hence leads to greater productivity and better health condition. A research article from Universiti Malaya paper examine the relationship between the importance of physical elements and overall satisfaction with work in a Malaysian context.

There are currently 18 real estate investment trusts (REITs) listed on Bursa Malaysia and 1 unlisted REIT. But by 2021 there will only be 17 listed REITs and 2 unlisted REITs. Unit holders of Amanah Harta Tanah PNB (AHP) has voted in favour of the privatization of AHP into an unlisted REIT. Interesting to note that AHP has been in existence since 1989 and it has been listed on the Malaysian stock exchange for more than 30 years! An article by the Editor-in-Chief provided an overview of this 30 years performance split into the Listed Property Trust era and the REITs regime.

A new column, *Legal Update*, is introduced to provide summary of important court cases related to property management and strata properties. In this issue, a summary of *Innab Salil & Ors v. Verve Suites Mont Kiara Management Corporation (2020)* is provided. This case provides an important decision on whether Airbnb operations can be carried out in a strata property where house rule prohibiting such activities has been passed by the JMB/MC. In coming to a decision, two other important related issues are considered i.e. whether house rules are in contravention of provision of National Land Code and whether Airbnb lettings are tenancies or licences.

Overhang of residential properties has plagued the Malaysian property market. The Royal Institution of Surveyors Malaysia has published a research report on the overhang issue. The report published as a book is reviewed in this issue. The reviewer has introduced a new term “natural overhang rate for residential properties” and also posed a question: “what is the appropriate percentage for the natural overhang rate for residential properties”?

For 2021, I wish everyone an *annus mirabilis*!

Merry Christmas and Happy New Year! ■



Dr. Ting Kien Hwa (Professor Sr Ts)

FMIPFM, FRICS, FRISM, MPEPS

Founding Editor & Editor-in-Chief
The Property Manager

NOTE

The definition of *annus mirabilis* in Merriam-Webster: a remarkable or notable year. The phrase is not common, but it is used by writers and historians to denote any particularly remarkable year.



From the Desk of The President



Greetings! The end of the year 2020 is fast approaching us. What a year it has been too ! The Covid-19 pandemic has been in the centre stage throughout the year, keeping all of us on our toes.

As Property and Facility Managers, we are at the forefront of it all. Our clients, the building owners and as well as the occupants of the buildings we manage, rely on us to ensure that the building services and facilities are operating in good condition. For buildings which experienced Covid-19 infections, the management teams needed to be able to ensure the appropriate measures are carried out to disinfect and to avoid any spreading of the virus. We also had to put ourselves at risk in carrying out our responsibilities. Kudos to all the Property and Facility Managers and team members out there!

The year also saw landmark decisions related to strata property management. The judgement in the *Muhamad Nazri Bin Muhamad v JMB Menara Rajawali & Denflow Sdn Bhd* appeal in 2019 and the Federal Court's rejection of the application for leave to appeal against Court of Appeal in May 2020 meant that the decision by the Court of Appeal on the Uniform Rate of Maintenance remains in force. The only avenue to pursue the charging of different rates will be by amending the Strata Management Act 2013 (Act 757). This has affected the numerous mixed developments around Malaysia where it is close to impossible to impose same rate for apartments, office buildings and shopping mall. The fight will go on.

With the pandemic affecting the normal operations of the JMBs and MCs especially in conducting AGMs and EGMs, there is need to look to technology to accommodate online AGMs and EGMs. Public listed companies, international associations and bodies

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have already utilized applications for the purpose of conducting AGMs and EGMs. There is still no effort on the side of the Government to look into this, making it difficult for JMBs and MCs as major decisions needed to be brought to AGMs and EGMs for voting.

The recent ruling in the Federal Court in October 2020 which allows JMBs and MCs to prohibit the use of apartments for short term rentals such as Air BnB and Homestays through the houserules will certainly affect the investment property market. Property Managers must be vigilant to ensure that if the houserules have such prohibitions, these must be enforced accordingly. There could, however, be some compromise if the JMBs and MCs are prepared to look at measures which may help to minimize the nuisance caused by the activities. The Property Managers must play his or her role to mediate the situation in order to arrive at a win-win situation.

The gazetting of the Strata Management Ordinance 2019 (Chapter 76) in late 2019 has started the Property Managers in Sarawak to prepare to embrace the new legislation which is quite similar to the Strata Management Act 2013 (Act 757). The developers in Sarawak have started to engage registered property management firms in 2020 which means that there will be opportunities for professionals in Sarawak to finally carry out management of strata properties.

The complaints against property management companies have been on the increase and is very alarming. Associations such as MIPFM will need to rise and increase professional training sessions in order to ensure the members are competent and able to deliver sterling quality of service to the customers. With the number of new buildings being completed increasing, the requirement for more property management personnel will also increase in tandem. It is therefore and opportune time to pick on online webinars moving forward for this purpose.

I truly hope and pray that we have indeed managed to learn from all the experiences in 2020 in order to start a new 2021 with new aspirations and resolutions.



In conjunction with this last publication for the year 2020, on behalf of the Committee, I wish you all out there a seasons' greetings and happy new year. May we all emerge from this pandemic period stronger and more resilient. ■

Regards,

Sr Haji Adzman Shah Mohd Ariffin

President, MIPFM

2019 / 2021

DAMP INDOOR SPACES AND ENVIRONMENTAL HEALTH

YOU WAI KUAN

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INTRODUCTION

Indoor air quality, sick building syndrome, building related sickness and environmental health are associated with the dampness in buildings. Mould outbreaks are common and microbial infections have been a public concern since the 1990s. Many government agencies and voluntary bodies in America such as the Environmental Protection Agency ("EPA"), Centre for Disease Control and Prevention ("CDC"), Institute of Inspection, Cleaning, Remediation Certification ("IICRC"), International Society of Indoor Air Quality and Climate ("ISIAQ") and America Industrial Hygienists Association ("AIHA") have published various guidelines on mould, mould prevention and remediation. In addition, World Health Organization ("WHO") in Europe have published "*WHO Guidelines for Indoor Air Quality: Dampness and Mould*" in 2009 in recognition of the seriousness of microbial growth due to dampness in buildings as a public health concern globally.

These agencies and bodies consider visible indoor moulds as not tolerable to health. This view is supported by many research studies and scientific publications. Visible moulds are positively associated with asthma, wheeze and allergic rhinitis. According to CDC, children in homes with visible mould are 49 percent more likely to have asthma than kids not exposed to the problem [1]. In addition, the risk of nasal allergies is 39 percent higher among children in moldy houses.

The objective of this paper is to review the various guidelines from these agencies, including the mold

prevention strategies and mold remediation cleaning procedures with consideration to local climate, building materials and practices. In addition, review will be made on the researches conducted on this topic in Malaysia so that a more holistic review and recommendation can be made.

CLIMATE IN MALAYSIA

Malaysia, located at the equator, has abundance of rainfall and sunshine throughout the year. The average rainfall is as high as 2500mm per annum and the average temperature is 27°C. Vast variety of fauna and flora thrives in thick tropical rain forests. In general, the ambient humidity is high, ranging from above 60% Relative Humidity ("RH") in the daytime to about 100% at night in the outdoor environment. Relative Humidity is the ratio of the amount of moisture contained in the air to the maximum amount of moisture the air can hold at a given temperature. The rich and moist soil in the forests with plenty of organic food in the top soil offer excellent conditions for growth and it houses huge diversity of organisms, ranging from the visible insects, termites and reptiles to the microscopic organisms which are not visible to the naked eyes.

These microorganisms play an important role to decompose dead plants and animals and replenish the nutrients to the mother nature, contributing to the chemical balance in the ecosystems. Microorganisms are microscopic organisms and are present naturally in our habitats and bodies. In fact, they are used in the fermentation of alcohol,

making of cheese, production of antibiotics, power generation (methane gas) and water treatment. With the rapid development in genetic engineering and biotechnology, microorganisms will continue to benefit us.

In comparison to the hot and humid outdoor weather, the relative humidity in the indoor environment ranges from 60% to 70% RH inside the buildings. However, for areas with higher dampness e.g. the toilets, kitchens, shaded external walls, drains and laundry areas, the RH is higher. Black, yellowish, green or brown circular spots can be easily found in these places. In addition, these circular spots can be found on leaky ceilings and they are commonly regarded as common and negligible "stains" in Malaysia. Such stain may contain mold, bacteria, viruses, algae, protozoa and microscopic animals, mites and plants. Although majority of microorganisms are harmless, some of them are health hazardous pathogens.

INDOOR MICROBIAL GROWTH AND ENVIRONMENTAL HEALTH

The microorganisms germinate, replicate and thrive in conditions as follows:

1. Humid condition, with Relative Humidity above 70 percent adjacent to surfaces
2. Availability of nutrients
3. Oxygen (Some microorganisms are anaerobes.)
4. Temperature (20 - 45°C)

Lack of any of the above hospitable conditions can prohibit the growth of microorganisms.

Indoor environments normally contain settled fungal spores, airborne bacteria and other microorganisms awaiting for the hospitable condition for growth. Nutrients are readily available on the fibrous and cellulose materials like upholstered and wooden furniture, plywood, chipboards, MDF boards, paint, food waste, skin flakes, etc. The normal indoor oxygen level and temperature (29-34°C) are rather

conducive for the growth of microorganism. As a result, moisture level becomes the determining condition in the growth of microorganisms. Thus, buildings with dampness issues are associated to microbial growth with potential health risks for infection through respiratory tracks.



Figure 1: Wall exposed to dampness

As most Malaysians spent approximately 90 percent of their time inside buildings, excessive presence of microorganisms in the buildings lead to exposure of the occupants to bacteria and mold level which is not tolerable to the healthy adults. Some strains of bacteria and mold can produce spores. Some of these microorganisms produce enzymes that caused decay on the building materials which adversely affect the structural integrity of the buildings (refer Figure 1). The unpleasant musty odour produced can jeopardize the comfort of the occupant too.

Healthy adults have immunity that can resist pathogenic airborne microorganisms with total bacteria count of up to 500 CFU/m³ and total fungal count of 1,000 CFU/m³, according to the *Industry Code of Practice for Indoor Air Quality 2010* in Malaysia and America Conference of Industrial Hygienists' Mold Guidelines. However, the young, old, sick and pregnant have lower immunity and they are more susceptible to the invasion of these airborne pathogens.

A comprehensive study was conducted by the Institute of Medicine, USA on the effects of dampness, microbial growth and health effects. A report known as "*Damp Indoor Spaces and Health*" was published in 2004. Table 1 shows a summary of the findings.

Table 1: Health effects of dampness with and without visible mould

Evidence of association between damp indoor environments and mould health outcomes		
Health outcome or symptom	Exposure to damp indoor environments	Presence of mould/other agents in damp indoor environments
Upper respiratory tract symptoms ¹	Sufficient evidence of an association ⁷	
Cough ²	Sufficient evidence of an association	
Wheeze ²	Sufficient evidence of an association	
Asthma symptoms in sensitized persons with asthma	Sufficient evidence of an association	
Hypersensitivity pneumonitis ³ in susceptible persons	Studied in relation to specific agents	Sufficient evidence of an association
Shortness of breath (dyspnea) ²	Limited or suggestive evidence ⁸	Inadequate or insufficient evidence ⁹
Respiratory illness in otherwise healthy children	Limited or suggestive evidence	
Respiratory illness in otherwise healthy adults	Inadequate or insufficient evidence	
Acute idiopathic pulmonary hemorrhage in infants	Inadequate or insufficient evidence	
Fungal sinusitis ⁴	No specific studies associated the condition with damp or moldy indoor spaces	
Severe respiratory infections in people whose immune system is severely immunocompromised ⁵	Not applicable ¹⁰	Sufficient evidence of an association
Fungus-related illnesses in people whose immune system is severely immunocompromised ⁵ and who have chronic obstructive pulmonary disease (COPD)	Not applicable ¹⁰	Sufficient evidence of an association
Colonization and potential lung infection in people with some chronic pulmonary disorders ⁶	Not applicable ¹⁰	Sufficient evidence of an association

Notes:

1. Upper respiratory tract symptoms include nasal congestion, rhinitis, allergic rhinitis “hay fever”, sneezing, runny or itchy nose, sinusitis and sore throat.
2. Lower respiratory tract symptoms include cough with or without production of phlegm, wheeze, chest tightness, and shortness of breath.
3. Hypersensitivity pneumonitis is a lung disease that is the result of exposure and sensitization to antigens inhaled with a variety of organic dusts. Symptoms include dry cough, dyspnea, and fever and sometimes acute bronchospasm.
4. Fungal sinusitis is associated with molds but molds may come from the indoor or the outdoor environment.
5. Immunocompromised persons are at increased risk for fungal colonization or opportunistic infections.
 - It is well established that fungal exposures causes opportunistic cutaneous and subcutaneous fungal infections of the skin of severely immunocompromised persons.
 - Respiratory infections can result from exposure to fungi, including *Aspergillus* spp. and *Fusarium* spp.
 - Severely immunocompromised persons include persons who undergo high-dose cancer chemotherapy, are recent recipients of a solid-organ transplant, or are otherwise immunocompromised.
6. Chronic pulmonary disorders include cystic fibrosis, asthma, and COPD. Colonization and infections result from exposure to fungi such as *Aspergillus*.
7. “Sufficient evidence of an association” means that studies show an association between the agent and disease and chance, bias, and confounding were ruled out with reasonable confidence.
8. “Limited or suggestive evidence of an association” means that evidence is suggestive of an association between the agent and the disease but is limited because chance, bias, and confounding cannot be ruled out with confidence.
9. “Inadequate or insufficient evidence to determine whether an association exists” means that the available studies are of insufficient quality, consistency, or statistical power to permit a conclusion regarding the presence of an association. Alternatively, no studies exist that examine the relationship.
10. Respiratory infections, fungus-related illnesses, and colonization with lung infection relating to specific organisms.

Source: Institute of Medicine (2004) “Damp Indoor Spaces and Health” (<http://www.nap.edu/books/0309091934/html/>)

There are a few implications from this report. Firstly, damp indoor spaces attract dust mites, termites, insects, cockroaches and rodents (rats and mice). Dust mites, fragments and dropping from the cockroaches are highly infectious allergens which can cause our bodies to develop allergenic reactions against them. Furthermore, microbial growth induced by indoor dampness is associated to allergy and infection at the respiratory tracts and skins among the people with impaired, deteriorating or under-developed immune system. Some metabolites of the microorganism are carcinogenic and toxic. Prolonged exposure to these metabolites can cause disordered immune system and chronic respiratory illness. Thus, prevention of indoor dampness is the key in maintaining indoor air quality and environmental health in the long run.

AIRBORNE BACTERIA (INDOOR)

Bacteria make up the biggest biomass on earth and are found in the soil, water and air. Although majority of bacteria are not hazardous and health threatening, some of them are pathogenic and they can cause acute sicknesses.

In a study to investigate the distribution of Legionella species in water cooling towers, a total of 20 water samples were collected from 11 cooling towers located in three different states in east, west and south Malaysia [2]. Legionella viable counts in these samples ranged from 100 to 2,000 CFU ml⁻¹; 28 isolates from the 24 samples were examined. These isolates were identified as Legionella pneumophila serogroup 1 (35.7%), L. pneumophila serogroup 2-14 (39%), L. pneumophila non-groupable (10.7%) etc. L. pneumophila was the predominant species at all sampling sites. Repeat sampling from the same cooling tower and testing different colonies from the same water sample showed concurrent colonization by different serogroups and different species of Legionella in some of the cooling towers.

ASHRAE Standard 188: Prevention of Legionellosis Associated with Building Water Systems (ASHRAE

2012) outlines the proactive preventive measure and the procedures in annual water monitoring, risks analysis, disinfection and recovery plan in the event of Legionnaire outbreak in air conditioning systems and water systems.

A study in 2011 by Universiti Putra Malaysia on five randomly selected primary schools in Malaysia found that normal flora bacteria was the most frequently isolated bacteria. The average concentrations of bacteria in indoor and outdoor air were 1025±612 CFU/m³ and 1473±1261 CFU/m³, respectively [3].

In a 2010 study involving eight secondary schools in Johor, a genus of bacteria known as *Streptomyces* spp. was detected in most of their samples. The bacteria is a risk factor for asthma in these schools. This bacterium causes mycetoma (chronic subcutaneous infection) and inflammation to the respiratory tracts [4]. In comparison to the acceptable total bacteria count of 500 CFU/m³ in indoor environment, bacterial infection is a common threat to pupils in Malaysia.

INDOOR MOLDS

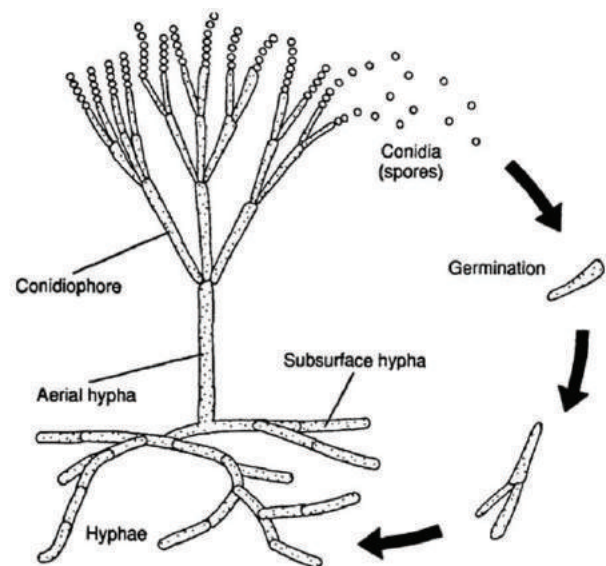


Figure 2: Structure of Mold

Source: <https://www.cliffsnotes.com/study-guides/biology/microbiology/the-fungi/structure-and-physiology-of-fungi>

Molds are microfungi with microscopic structures. In hospitable environment for growth, microscopic

seeds like structure known as spores absorb water, swell to 2 to 3 times their original size, and begin to form thread-like structures known as hyphae. As hyphae grow, root like structure known as mycelium grow and penetrate deep into the food source in search for more nutrients. Emission of enzyme assists breaking down of organic food into simple nutrients. A tangled mass of hyphae visible to the unaided eye is a mycelium. When mycelium continues to grow in all directions, a circular pattern will be formed. When the mold mature, aerial hyphae will form and release spores in their reproduction process.

Spores of different genera and species of mold take different duration for germination. In general, molds start to grow on damp spots with hospitable environment if the dampness last for more than 24 hours.

Many molds that thrive in damp indoor environments produce mycotoxin and microbial Volatile Organic Compounds ("mVOC") which is linked to moldy musty odour. Some of these mycotoxin and mVOCs are carcinogenic and/or toxic. In poorly ventilated indoor environments, the concentration of these toxins in the indoor air increase overtime, causing the consequential drop in indoor air quality. Inhalation of these toxins can cause toxic effects ranging from short-term irritation to immunosuppression, severe dermatosis on the skins and cancer [5].

In addition, inhalation of excessive spores and mold fragments can cause the immune systems to overreact to these allergens. This reaction triggers a cascade of reactions that lead to allergy symptoms. Like other allergies, a mold allergy can cause cough, itchy eyes and other symptoms. In some people, mold allergy is linked to asthma and exposure causes restricted breathing and other airway symptoms. Continuous exposure to these biology pollutants like bacteria and mold spores, fragments and metabolites (Mycotoxin and mVOCs) can cause weakening in the immune systems due to the

toxic effects and development of allergy, resulting in opportunistic infections.

PREVENTION OF MICROBIAL GROWTH - MOISTURE CONTROL

The climates, buildings and human beings form a micro-ecology where they interact with each other within the buildings. Human activities like breathing, cooking, washing and showering increase the indoor relative humidity. Vapor produced by our activities is vented through the windows or driven out of the buildings by mechanical means such as the exhaust fans. Waste water is channeled to the drainage system and damp proofing system installed prevents water seepage to the floor and soaking of water to the wall via capillary action.

Rain Penetration and Ground Water

The hot and humid climate with an average rainfall of 2,500 mm per annum, high relative humidity and vast coverage of forest and landscaped areas posse a big challenge in moisture control and mold prevention in Malaysia. The increase in rainfall, thunderstorms and floods recently has been observed due to the greenhouse effect globally. As a result, rainwater and ground water has become a major concern in moisture control in Malaysia.

The mechanism which prevents rain penetration include the roof system, gutters, flashings, rainwater down pipes and the drainage system. The gradient on the slope varies according to the roof system employed. On flat concrete roof, the deterioration of waterproofing membranes, construction joints and expansion joints is caused by ultra violet, thermal pressure difference and movement due to settlement, wind load and mechanical parts installed (i.e. water tanks, cooling towers and gondolas). In addition, poor maintenance and cleaning the flat roof e.g. debris and leaves cause water collection and blockage that expedite deterioration due to permeation of water, build up of acidity in the concrete and concrete damage

due to swelling of reinforcement steel bars due to oxidization. Regular replacement and maintenance are needed in order to upkeep building functionality and performance. On average, these elements require replacement once every ten years.

Besides, sloppy ground with gradient that drain rainwater away from the building (i.e. 5% steepness) is vital to prevent capillary suction of rainwater through the foundation and the floor. Waterproofing at the foundation, vapor diffusion retardants below the concrete floor slab and dampproof course on the first layer of bricks are important mechanism to prevent vapor diffusion via capillary action of the ground water. If the steepness of the earth cannot be altered for proper drainage due to unforeseeable limitation, installation of underground subsoil system can assist prevention of ground water intrusion into the buildings.

Building Construction Authority ("BCA") in Singapore conducted a survey involving about 10,000 private residential units and found almost 90 percent of water seepage came from the cracks in the plastered external walls. Being a maintenance contractor, the author has evidenced many incidences of this nature in the building in Malaysia. BCA outlines many good industry practices in construction including waterproofing of external perimeter walls and planters, damp proof course, proper method in brick laying and plastering, material handling, installation of mesh reinforcement at the bricks and edges, application of sealant and the treatment at joints between dissimilar materials. Although these recommendations are not compulsory in Malaysia, it is good measures that we should consider in improving the construction quality.

Water Consumption and Discharge

Plumbing system requires regular maintenance too. Steel pipes are prone to rust and leak due to the exposure to chlorine in the domestic water. Other piping and sealing materials like PVC, ABS and PE also have an average life of 15 years.

Waterproofing system in areas with regular wetting and water consumption must be installed in the following manner: Construction of 25mm X 25mm of angle fillets, application of highly elastic and adhesive waterproofing compound, cement rendering and installation of tiles with the desired gradient (i.e. 1 inch drop per 10 feet) must be installed to prevent seepage of waste water via gravity and capillary suction to the adjacent walls. Such system is applicable to the toilets, laundry and kitchen in the ground floor.

Building Materials

Hygroscopic materials and soft wood used in the building are prone to microbial growth (Figure 3). These products include the fabrics, plywood, chipboards, MDF boards, timber floor, carpet, lumber for roofs and furniture. The moisture content in these materials is above 10 percent. If coupled by a low level of dampness, say 65 percent RH, the air adjacent to these surfaces will reach dew points at the lower temperature at night and they become hospitable to microbial growth.



Figure 3: Hazardous microbial growth in indoor spaces

Source: <https://www.alpharettawaterdamageremoval.com/symptoms-health-concerns-mold-property/>

Vapor Diffusion

The hot and humid climate causes vapor diffusion into the building due to the higher vapor pressure in the outdoor environment. Therefore, vapor diffusion retardant is important to prevent such high inward flow of moisture. In areas with low latitude, sealer and

coating system on the external walls is commonly adopted due to the ease of application and low costs.

Vapor is also produced during our breathing and daily activities like showering, washing, combustion, cloth drying and cooking. In addition, ornament water features, aquariums, plants and pets contribute to the increase in indoor humidity, too. Ventilation of the vapor produced is vented outdoor with exhaust fans, cooking hoods, vented roof systems and ventilators.

Condensation

Vapor in the air condense to water when the air can no longer withhold the water in the air when it encounter a surface with a low temperature. Condensation of the vapor causes wetting of the surfaces which promote microbial growth.

Due to the hot climate in Malaysia, the use of air conditioners are common. In fully airconditioned residential buildings with fully sealed openings and no dehumidification, moisture control become a big challenge. Although the RH of the chilled air is lower, vapor can diffuse inward from the high RH outdoor air due to non-availability of vapor diffusion retardant, cavity, unplanned openings and excessive ventilation. In addition, non-availability of dehumidified fresh air supply can elevate indoor moisture due to our normal activities, too. Thus, the humid air will condense when it encounters the cold indoor surfaces caused by the air conditioning.

Oversizing and prolong use of air conditioners causes cooling of walls that extends to the external surfaces, depending on the conductivity of the materials used in the construction of the wall and the availability of insulation. Condensation occurs on the external wall when the cold wall surfaces encounter humid external air. For hospitals and cleanrooms, foam or glass wool insulation is needed in preventing condensation.

Sufficient insulation must be installed on the copper tubes for the coolant that connect the indoor blower and the external condenser. Leaking caused by

condensation can be evidenced due to insufficient insulation and the wrapping at the joints of the insulation tubes. Double insulation without tightening at the joint of the insulation tubes is recommended.

In commercial building which is airtight with comprehensive and planned mechanical ventilation and cooling system, dehumidifier is integrated in the air handling and fresh air supply system. Positive air pressure relative to the external air is maintained in order to prevent intrusion of humid external air. Air ducts must be sealed with mastic in order to prevent air leakage. In addition, the duct must be covered by sufficient insulation i.e. foam or glass wool and covered by aluminium foil as vapor diffusion retardant.

Condensation water produced in the cooling system must be effectively drained away with the dripping pan and the piping. This drainage system must be cleaned and maintained regularly in order to prevent any blockage which will cause build-up of stagnant water, hence promoting microbial growth.

MYTHS IN CONTROLLING BIOLOGICAL CONTAMINATION AND DEODORIZATION

There are a few common myths related to the control and clean-up of biological contamination and deodorization in Malaysia. These are quick fixes that do not address the underlying problem in moisture intrusion that lead to microbial growth. In many instances, these quick fixes create other corresponding adverse side effects when the symptoms of the contamination are covered up.

Ultraviolet Germicidal Irradiation

Ultra Violet Germicidal Irradiation ("UVGI") that uses low pressure mercury lamp to produce Ultraviolet C ("UVC") with wavelength of 200nm to 300nm. They are installed in the ducting system or in the portable air cleaners.

UVGI can disrupt the DNA of the microorganisms and render them inactive and harmless to us.

Nevertheless, the effectiveness in disinfection depend on the duration of exposure to the radiation, susceptibility of the ultra violet inactivation of different microorganism and their spores (bacterial and fungal spores are the most resistant to UVGI), dust coverage on the UVGI lamps, ability of microorganism to repair their damaged DNA and wear and tear of the UVGI lamps [10]. Ozone gas, an air pollutant, is produced when UVC hits oxygen gas. Besides, the inherent risks of leakage of UVC which is a low penetrating form of UV compared to Ultraviolet A and Ultraviolet B can be detrimental to our eyes. It can cause inflammation to the cornea and retina, including blindness, if not shielded properly. The exposure of skins to the UVC which is mutagenic and carcinogenic can cause skin aging and skin cancer, in some rigorous cases. Since UVC is invisible light, its leakage can hardly be identified [6].

Ozone Cleaners

Ozone comprises of three oxygen atom with unstable molecular bonds and is a strong oxidation agent. Some vendors claim that ozone generators which are sold as Air Cleaner can clean the air via oxidation of organic pollutants including biological contaminants like the bacteria and molds. They also claim that these ozone generators are safe for use and capable of controlling indoor air pollution. Nevertheless, such claim has been refuted by medical professionals.

Concentration of Ozone gas is safe at 0.05ppm. At this level, it has been scientifically proven that it takes too long for the reaction of the oxidation cleaning. Secondly, for many of the chemicals with which ozone does readily react, the reaction can form a variety of harmful or irritating by-products [7].

Ionizers

Ionizers which are also known as "electronic air cleaners", are devices that disperses negatively (and/or positively) charged ions into the air. These ions attach to particles in the air giving them a negative (or positive) charge so that the particles

may attach to nearby surfaces such as walls or furniture, or attach to one another and settle out of the air. In recent experiments, ionizers were found to be less effective in removing particles of dust, tobacco smoke, pollen or fungal spores than either high efficiency particle filters or electrostatic precipitators [8].

Photo Catalytic Oxidation

Photo catalytic oxidation ("PCO") is another oxidization agent which is claimed to be stronger than ozone gas in controlling indoor pollutants including microorganisms. Recently, EPA has funded the research and scientifically proven that application of PCO is limited because currently available catalysts are ineffective in destroying gaseous pollutants from indoor air. In addition, oxidation of some chemicals available in indoor environment can produce more harmful by-products that worsen the indoor air quality.

Air Filtration

Air filtration in residential and commercial buildings is designed for entrapment of particulate dusts. Depending on the blowing load and filtration efficiency of the filters adopted, the filtration of large particulate dusts can be ineffective for large dusts which will settle from the air quicker on the ground before it reaches the filters. In rigorous environment with high expectation for cleanliness, High Efficiency Particulate Air ("HEPA") filters and strong blowing fans are adopted.

In addition, air filtration cannot remove contaminating gases like the mycotoxin and mVOCs produced by molds and bacteria.

Air Duct Cleaning

According to EPA, air duct cleaning has never been showed to prevent health problems. Air duct cleaning is only needed in the event of identification of visible molds inside the ducts or on other component in the air conditioning system,

clogging caused by excessive deposition of dusts and/or infestation of vermin (rodents and insects). Normal settled dusts and spores are not harmful.

EPA emphasizes on the importance of settling the underlying problems of these problems before any air duct cleaning. Otherwise, these problems will recur. Indeed, air duct cleaning alone produce limited effect in the improvement of indoor air quality. More emphasis should be given to prevention of the dirt and water from entering the air ducts. Although there is no detrimental effect for engaging air duct cleaning, professionalism and comprehensive cleaning in all air conditioning components is needed for a thorough servicing.

Perfume Spay

Perfume sprays are widely installed in the offices in order to give some pleasant scent and combat musty odor. Nevertheless, little has been known about the deterioration to the indoor air quality.

Researchers concluded that perfume-scented strips can cause exacerbations of symptoms and airway obstruction in asthmatic patients. Severe and atopic asthma increases risk of adverse respiratory reactions to perfumes [9 and 10]. In some cases, an excessive use of perfumes may cause allergic reactions of the skin. For instance, acetophenone, ethyl acetate and acetone while present in many perfumes, are also known or potential respiratory allergens.

Bacteria and Mold Disinfectants

Bacteria and mold disinfectant can effectively kill and remove these microorganisms. However, dead mold fragments and spores are equally allergenic, be it alive or dead. Furthermore, biocides and antimicrobials can be harmful to humans, pet and wildlife if not used properly. These chemicals should only be used to treat microorganisms on the surfaces and structures and in the manner for which the products have been registered by appropriate government agencies.

Anti Microbial Coatings

Anti microbial coatings which integrate nano silver and other innovative disinfectant chemicals can hardly be applied to some concealed areas that microorganisms grow, i.e. internal part of gypsum board partitions and insulation, air ducts and wooden roof trusses. These coatings should not be adopted with the tolerance to moisture control.

Cleanliness on the External Walls

Mold grows on the external walls is an indication of a reservoir of microorganisms in close proximity. Water seepage on cracks and cavities on the external give rise to the dampness that is hospitable to microbial growth. Water seepage and air leak in the cavities can bring in the spores and fragments of microorganisms and increase the microbial concentration indoor. The normal breath of wind at 15 to 20 knot can effectively carry the spores into the buildings via the doors, window and other openings.

DECONTAMINATION OF MICROBIAL OUTBREAK

Decontamination exercise is recommended by agencies such as EPA, AIHA, ACGIH, IICRC, NYCDOH and ISIAQ. Moisture control and physical removal of visible molds with proper containment, personal protection equipment and disposal of contaminated materials is vital in reducing the contamination, avoiding cross contamination and protecting the workers and occupants.

An AIHA publication known as "Recognition, Evaluation and Control of Indoor Mold" recommended the following principles in mold assessment:

1. Mold growth (colonization) should not be tolerated on indoor materials and furnishing
2. Initial assessment and evaluation should include a thorough visual inspection
3. The extend of mold growth and water damage should be visually assessed

4. Intrusive method of assessment such as use of a borescope or creating openings into closed cavity is necessary to inspect hidden mold

Common principles in remediation of indoor mold include:

1. Moldy building materials and content should be cleaned and discarded.
2. Remediation work should be conducted in a manner that limit the mold be aerosolized and limit aerosolized materials in the workplace.
3. The type of containment should be guided by how much building materials/content is impacted.
4. The remediation areas should be clean and free from visible mold and debris.

5. Small areas of mold can be addressed by building maintenance and engineering staffs.

6. Professional judgment should be utilized when there is more than a small area of contamination.

Common principles in worker health and safety measures include:


1. Personal protection equipment (PPE) in the form of respiratory protection, gloves and eye protection is recommended (Figure 4)
2. Any worker expected to perform remediation work of any size should receive training commensurate to the extent of the expected work to be performed.



Figure 4: Personal Protective Equipment during Mold Remediation Cleaning

Source: <https://servicemasterstorepros.com/mold-damage-remediation/>

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Amongst the many guidelines and documents on mold assessment and remediation, the document published by the IICRC has been accepted by the America National Standard Institute ("ANSI") as the national standard, namely *ANSI/IICRC S520 Standard and Reference Guide for Professional Mold Remediation* [11].

In the event of microbial outbreak, investigators must be protected with sufficient PPE in view of the inherent risks of such outbreak. Knowledge in building science, thermodynamics, materials science and medicine is vital in order to have preliminary understanding of building damage, epidemic response among the occupants and

the subsequent remediation plan. In some complicated cases, experts from other disciplines will be invited for a professional diagnosis and planning of procedure and extent of remediation.

Occupant of the affected buildings will be interviewed according to questionnaires. Indoor air quality assessment which involved air sampling and isolation of microorganism is needed in the ambiguous situation.

Diagnostic tools involved in ascertaining the vapor intrusion and generation are appended hereunder:

1. Thermo-hygrometer – a device that measures the temperature and ambient RH
2. Moisture Meter – a probe that measure moisture level on the substrates
3. Psychrometric chart – a chart to determine the Dew Point Condition
4. Manometer – an instrument to measure the static air pressure differential between two or more adjacent areas
5. Thermal Imaging Device – an instrument used to detect surface temperature differences and do not detect moisture or measure moisture through materials
6. Borescope – An optical device allow remote viewing into concealed areas, such as wall cavities, air ducts and the hidden compartment of utilities
7. Data Loggers – this is chart recorders that measure and record atmospheric conditions over time

Other more advance equipment and non-destructive testing for complicated cases include:

1. Pressure Gauge Testing – a device to check the domestic water pipes
2. Echo inspection – an instrument to inspect hidden utilities and cavity

3. ASTM D5957 – 98 (2005) Standard Guide for Flood Testing Horizontal Waterproofing Installations
4. ASTM C1060 - 11a Standard Practice for Thermographic Inspection of Insulation Installations in Envelope Cavities of Frame Buildings
5. Ultrasonic Leak Detector – A device that detect underground pipe leaking
6. Blower Door Test – A analytical system for assessment of air leak in the ducting system


After the initial inspection is completed, the next step involves developing a preliminary determination that draw a conclusion on the identification of actual or potential mold growth, known or suspected areas of moisture intrusion and

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the need for the involvement of other experts or health care professionals.

The investigators need to determine the risk level and a formal assessment of Condition 1, 2 or 3 as follows:

Condition 1 (normal fungal ecology): an indoor environment that may have settled spores, fungal fragments or traces of actual growth whose identity, location and quantity are reflective of a normal fungal ecology for a similar indoor environment

Condition 2 (settle spores): an indoor environment that is primarily contaminated with settled spores that were dispersed directly or indirectly from a Condition 3 area, and which may have traces of actual growth

Condition 3 (actual growth): an indoor environment contaminated with the presence of actual mold growth and associated spores. Actual growth includes growth that is active or dormant, visible or hidden.

Upon the determination of the type of Condition and the risk assessment, the investigator can develop work plans, protocols and specification. Consideration in such remediation procedures include containment, pressure differentials, hazardous or regulated materials, safety and health provisions, contents, contamination materials removal and handling, detail cleaning, disposal, post remediation evaluation, post remediation evaluation and containment removal.

These plans must be communicated to the customers and building occupants before the execution of work. In addition, workers involved must go through medical surveillance check-up before commencing the work. Then, occupants with respiratory illness and mold allergy must be isolated during the course of work.

Remediation commences with the briefing and training to the workers involved with regards to the use of PPE and the scope of work. Then,

containment is erected according to the specification and negative air exhaust fans with HEPA filters are installed (Figure 5). Leaking and moisture intrusion must be stopped first. Materials exposed to microbial growth are cleaned with HEPA vacuum and damp wiping, sanding and scrapping is done, depending on the type of surfaces. Porous materials are physically dismantled, packed with double disposal bags and duly labeled as dangerous hazardous waste. For porous materials with visible mold that need to be preserved, special preservative cleaning and drying is recommended. The debris will then be delivered to designated disposal sites or processed by designated waste management contractors.



Figure 5: Mold remediation with physical removal of mold

In the hot and humid climate in Malaysia, dehumidification with the use of dehumidifiers is critical. Steam cleaning is not recommended due to the excessive humidity released. Use of disinfectant is not necessary except in the outbreak caused by bacteria and viruses. Antimicrobial coatings and sealant can be adopted without the compromise to moisture control. Duct cleaning is not recommended except in the event of identification of visible molds in the ducting and air conditioning systems.

Post Remediation Evaluation

Evaluation with laser particulate counters, air sampling and thermal graphic imagers is used after the remediation work. Unless and until the evaluation indicates successful result, the containments will not be taken down and disposed.

CONCLUSION AND RECOMMENDATION

The hot and humid climate in Malaysia is indeed a heaven for microorganisms. Any moisture intrusion can easily give rise to microbial growth. Although limited, the scientific publications available in Malaysia with regards to microbial contamination indicates that bacteria and molds are common in Malaysia. Nevertheless, the knowledge of the health impact of such contamination is very low among the Malaysian communities.

The research on the indoor fungi, identification of specific pathogen and the consequential impact of the metabolites to the environmental health is still in infant stage. More research is needed while moisture intrusion and microbial outbreak is on the rising trend in Malaysia nowadays.

Statutory requirement relating to microbial growth and exposure limit is available for commercial and industrial buildings only. There is no guideline for residential buildings in Malaysia today. Nevertheless, we can adopt guidelines and recommendations from other international bodies with established guidelines and standards. The challenge lies on adopting these guidelines with the consideration of local environment conditions.

Amidst of the gimmicks promoted by various vendors in improving indoor air quality, we must take more scientific measures in this aspect and adopt a systematic approach to prevent indoor microbial contamination by ensuring dryness, cleanliness and hygiene for our buildings and the occupants. Indeed, moisture control is the only measure and it is predominantly an engineering concern. In the event of microbial contamination, decontamination is the only effective means to remove and control the contamination.

In conclusion, the construction design, construction quality control and routine maintenance is the bottom line for moisture control and prevention of microbial contamination. ■

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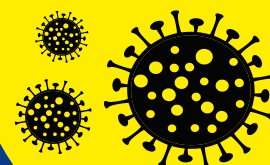
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- Sekiranya sarung tangan getah yang digunakan boleh diguna semula, hendaklah dibasuh dan dijemur setiap kali selepas selesai kerja-kerja disinfeksi
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EMPLOYEES' SATISFACTION TOWARDS PHYSICAL ELEMENTS IN OFFICE SPACE THAT AFFECT PRODUCTIVITY: A MALAYSIAN PILOT CASE STUDY

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ABSTRACT

The performance of an employee is related to productivity. Generally, it is acknowledged that the physical elements of workplace can influence satisfaction and implicate productivity. Workplace is the fundamental requirement that allows employee to carry out their work in comfortable conditions. A comfortable workplace provides healthy, liveable and productive surroundings. It helps the workers to reduce stress and hence leads to greater productivity and better health condition. Unfortunately, many organizations do not give much attention to the significance of workplace design. Therefore, this paper attempts to examine the relationship between the importance of physical elements and overall satisfaction with work in a Malaysian context. Case studies were adopted as research strategy. Two company office spaces in Klang Valley with similar characteristics were selected. A questionnaire survey was conducted in the selected case studies to investigate the relationship between the physical elements in workplace and work satisfaction. Subsequently,

semi-structured interviews with the employers and employees were conducted to obtain detailed information about the physical elements in workplace and recommendations for improving them. The results demonstrate workplace design like workstation characteristics, space seating and arrangement as well as interpersonal distance as the most significant physical elements in workplace. The study also reveals that there is a significant relationship between physical elements in workplace and the employees' satisfaction with work. Lastly, the paper concludes with recommendations for workplace design including flexible workstations, balance between communicability and privacy in space seating and arrangement as well as the distance between an individual's workstation and co-workers' workstations, meeting spaces and shared area in ensuring employee satisfaction and productivity.

Keywords: physical elements, workplace, satisfaction, productivity, space management, office

1.0 INTRODUCTION

Nowadays, the workplace is likely to be a high-demand environment and subject to fast and continual change as a result of increasing demands and fewer resource allocations (Atkin and Brooks, 2005). Moreover, employers seek to eliminate idle time in business operations, with work intensification not always with a view to quality instead of quantity (Thompson and Warhurst, 1998). As a result, employees are not only under pressure to work smarter but to work harder (Atkin and Brooks, 2005).

However, there is evidence showing that working away from the office leads to higher levels of productivity subject to nature of the work (Atkin and Brooks, 2005). Perhaps there is a link between individual satisfaction towards workplace and the productivity of the individual. A number of studies have consistently revealed the association between job satisfaction and productivity (Bakotic, 2016, Bellet et al., 2019, Fassoulis and Alexopoulos, 2015, Fogaca and Junior, 2016, Peiro et al., 2019). In fact, a comfortable workplace helps workers to reduce stress and hence leads to greater productivity and better health condition (G/M Business Interiors, 2016). According to Sullivan et al. (2013), productivity of workers will increase up to 15 percent when an improvement is undertaken to the office environment such as the spatial arrangement, lighting efficiency, level of noise, etc. This is also made evident by Shobe (2018) who argued that physical work environment heavily determines the level of productivity and performance in the workplace.

Undeniably, increasing productivity is one of the most critical goals in business. Meanwhile, the American Society of Interior Designers (1999) revealed that physical workplace design is one of the top three factors affecting work performance and job satisfaction. The society further elaborated that half of the people seeking a job prefer working in a company which provide good physical environment workplace. Chandrasekar (2011) mentioned that the workplace can influence employee productivity, morale and engagement both in positive and negative ways. The influential factors include

workstation design, furniture, ventilation, lighting, noise, privacy, and safety measures in fire emergency.

A comfortable workplace is considered as the fundamental condition to provide healthy, liveable and productive surroundings (Zhang and Barrett, 2010). The importance of having effective design of office areas is further demonstrated by leading companies such as Apple, Yahoo! and Google (Kastelein, 2014). They believe that a good physical setting is essential to encourage employees' movement at work as having workers in the same place is crucial to company's success. Nevertheless, many organisations do not give much attention to the importance of workplace design. As highlighted by Weijs-Perree et al. (2019), study on the influence of physical work environment characteristics in business is still limited. Forty-six percent of the employees think that workplace design in their companies are not a top priority, as the companies want to keep their overhead cost low (Gensler Design, 2006). Yet, companies seem unconcerned about the significance of workplace design towards work performance and productivity. In order to gain awareness about the impact of workplace physical elements on the work productivity, this paper aims to examine the relationship between the importance of physical elements and overall satisfaction with work in the Malaysian context.

2.0 PHYSICAL ELEMENTS IN WORKPLACE

Workplace is one of the fundamental human requirements that allow employee to carry out their work under comfortable conditions (Roelofsen, 2002). The workplace layout sets where the workers will work, including the amount of allocated space and furnishings to be used. The workplace is not just about cubes or offices but the appropriate combination of space, protocols, technology and tools that support the nature of work to keep the employees being productive, satisfied and loyal (Rice and Mitchell-Ketzes, 2002).

The constant increase in the collaborative nature of knowledge-based work requires workplace to support both potent interaction and concentrated work (Hua et al., 2011). It is an approach that can encourage

a more dynamic and innovative work environment (Aronoff, 1995). Moreover, workplace collaboration is described as a system of behaviours which includes both interactive and individual activities. Interaction is the important factor for collaboration to succeed (Hua et al., 2011).

However, uninterrupted time for concentrated work is still needed in the modern workplace (McCoy, 2000). There is a common view that an open office layout encourages more communication and facilitates an easier exchange of knowledge and skills while the availability of concentration cells will create good conditions for concentrated work (Theo and van der Voordt, 2004). Research by Kim and Dear (2013), however, demonstrated that the benefits of enhanced 'ease of interaction' that open-plan office layout offer are often smaller than the noise and loss of privacy penalties with this office layout. For Haynes et al. (2017), it actually depends on the context of the interaction as concentration in a closed office environment may also be interrupted through phone calls and e-mail.

As supported by Vink et al. (2017), layout of the office is strongly dependent on the task. It is essential for organizations to fully comprehend the benefits and challenges both open and closed-plan office settings offer (Leesman, 2020). Thus, it is challenging to facilitate both interaction and tasks that required concentration and distraction-free in workplace design (Hua et al., 2011). For instance, the organisational culture in some workplaces becomes less hierarchical with fewer high-privacy, enclosed offices and more accessible work environments in the effort to increase collaboration (Becker, 2004). Nevertheless, an argument still exists that active collaboration cannot be guaranteed by lowering the physical barriers between workstation (Hua et al., 2011).

In addition, the number of collaborative spaces in the workplace can influence the workers' perception on how the workplace environment can support or hinder the collaborative work (Hua et al., 2011). The characteristics of workplace spatial settings include:

- The distance from workstation to meeting space, shared service area and pantry.

- The percentage of floor space that was dedicated for workstation, shared services and amenities.

Therefore, both employers and employees need to carefully consider the functional design and layout of the workplace from time to time. This is due to the changing nature of work and evolving attitudes and behaviours producing unique demands and expectations (Atkin and Brooks, 2005). Commonly, workplace is designed with a focus on the nature of job and the individuals that are working in that office (Hameed and Amjad, 2009).

2.1 Impact of Workplace on Productivity

The performance of an employee is measured by the output the individual produces which is related to productivity (Hameed and Amjad, 2009). For Vink et al. (2017), productivity is not only measured by how fast services or products are made but also associated with the creation of new ideas and the responsibility of workers for innovation and continuous learning. For Anjum et al. (2018), the term productivity can be measured in different terms depending on the context, culture and type of organization.

Generally, it is acknowledged that the physical elements of workplace can influence satisfaction and hence implicate productivity. As an example, the workplace characteristics that influence work at the individual level include the architectural properties such as size of office and number of walls, privacy and spatial comfort (Atkin and Brooks, 2005). Besides, other elements such as support facilities, arrangement of space, occupancy, seating configuration and arrangement of elements such as furniture are influential in the workers' satisfaction and productivity. Furthermore, Oldham et al. (1991) noted that spatial characteristics like spatial density, number of enclosures that surround the worker's workspace and interpersonal distance in workplace affects the productivity of office workers. Research done by Leblebici (2012) showed furniture and furnishing as the leading physical aspect that influence employees' performance followed by arrangement of office space, interior surface and provision of storage facilities.

According to Hua et al. (2011), spatial characteristics in workplace that most affect most the productivity of office workers are spatial density, number of enclosures that surround the worker's workplace and interpersonal distance. Moreover, factors such as an unsatisfactory, cluttered workplace and the physical environment also contribute to the loss of employees' productivity (Clements-Croome and Li, 1997). The quality of workplace determines the level of employees' productivity, satisfaction and motivation, as well as being one of the strong influences whether the organisation can recruit and retain talented people (Leblebici, 2012).

Uzee (1999) concluded that the physical layout of workspace with efficient management processes plays an important role in boosting the productivity of the worker and improving performance of an organisation. Haynes (2008) and Vink et al. (2017) argued that employees should be involved in the creation of office solutions to better meet their needs and eventually to keep them motivated. Thus, increased productivity and better outcomes are assumed from the result of better workplace environment (Hameed and Amjad, 2009).

3.0 RESEARCH METHODOLOGY

This study is a mixed method research and adopts a case study approach to assess the physical elements of workplace which affect employees' satisfaction in the office. According to Yin (2009), cases should be selected in a way that reflects the characteristics that match with the intended theoretical statements. Two different company office spaces in Klang Valley were selected as case studies for this research. Similar characteristics were shared between these case studies, particularly in terms of the nature of the business, the nature of the work and the working or operating hours, as shown in Table 1. The primary source of data for this study was collected through a questionnaire survey and semi-structured interviews as adopted from Au-Yong et al. (2018). The chosen methods were governed by the methodology adopted in previous research of Abdul Mohit and Azim (2012).

In the first phase of data collection, the relationship between the physical elements in the workplace and

work satisfaction was established by the employees in the selected case studies via questionnaire survey. In particular, these were measured by rating the physical elements in workplace and the overall satisfaction with work. The questionnaire designed for the study contained three main sections; 1) respondents' demographic profiles, 2) rating the physical elements in workplace, and 3) satisfaction with work.

Unfortunately, the studied offices did not allow the researchers to disrupt the operations of the offices. As a result, only 30 responses are gathered from each office. Next, semi-structured interviews with the employers (one for each selected office) and employees (all the questionnaire survey respondents) were conducted to prompt the detailed information about physical elements in the workplace and recommendations for improving them.

The data collected through the questionnaire survey was analysed using Statistical Package for Social Sciences (SPSS) software. In particular, ranking analysis and correlation analysis were used to summarise the characteristics of single and two variables respectively. Soh et al. (2019) explained that ranking analysis makes use of mean scores to identify the averages of each research variable and rank them accordingly; while correlation analysis measures the relationships between research variables (Leech et al., 2011). Meanwhile, the interview findings were embedded in the discussion to further elaborate the survey results.

Table 1: Characteristics of the case studies

Characteristics	Office A	Office B
Type of Building	High rise office building	High rise office building
Company Description	Property and real estate	Construction building and engineering
Nature of work of target group	Computer-based business activities	Computer-based business activities
Hours spent at workplace	More than 6 hours	More than 6 hours
Working hours	Regular working hours, Monday-Friday	Regular working hours, Monday-Friday

4.0 FINDINGS, DISCUSSION AND RECOMMENDATIONS

Six main physical elements of workplace were determined through the literature review for further investigation as follows:

- (a) Workstation characteristics – the workstation size, workstation density, lighting quality, etc. (IJmker et al., 2008, Louis Harris and Associates Inc., 1980, Hua et al., 2011)
- (b) Space seating and arrangement – the location of windows and doors, partition wall, arrangement of furniture and workstations, height of ceilings, electrical outlets and proposed finishes. (Leaman and Boardass, 1993, Kubba, 2003, Chandrasekar, 2011, G/M Business Interiors, 2016, IJmker et al., 2008, Shafaghat et al., 2015, Hedge, 1991, Rayfield, 1997)
- (c) Furniture and equipment – the selection of furniture and equipment based on the individual's health, well-being and quality of work life, safety as well as comfortability. (Fernandez, 1995, IJmker et al., 2008, Aronoff, 1995)
- (d) Two-dimensional (2D) horizontal and vertical layout – the finishes or painting of wall, floor and ceiling (Fernandez, 1995, IJmker et al., 2008, Aronoff, 1995, Chua et al., 2017)
- (e) Physical enclosures of workplace – the partition of spaces for privacy purpose (Hua et al., 2011, Sundstrom and Sundstrom, 1986, Dahlin, 1999, Rice and Mitchell-Ketzes, 2002, Mohammadi et al., 2014, Brill et al., 2000, Shafaghat et al., 2015, LoVerde et al., 2014, Schutte et al., 2007)
- (f) Interpersonal distance – the accessibility among workstations, meeting spaces, copying and printing areas, shared areas, etc. (Hua et al., 2011, Sundstrom and Sundstrom, 1986)

The rating of the physical elements was collected using a 5-point Likert scale, where 1 represented "very poor" and 5 represented "very good". Thus, ranking analysis was performed to rank the physical elements based on the mean scores. The data of Office A and Office B is analysed separately so that a comparison of the results between them can be made. Figure 1 and Figure 2 show the rating of physical elements in workplace for Office A and Office B respectively.

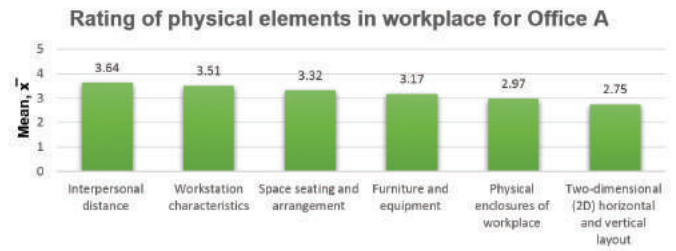


Figure 1: Rating of physical elements in workplace for Office A

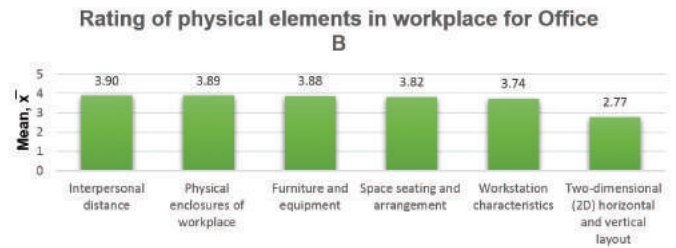


Figure 2: Rating of physical elements in workplace for Office B

The highest-rated physical element Office A was interpersonal distance in the working space, with the mean score of 3.64. In Office B similarly, the top-rated physical element was interpersonal distance with mean score of 3.90. A majority of the interview respondents from Office A and Office B revealed that they are satisfied with the distance of their workstation to another workstation. They can also easily access other spaces such as meeting rooms, pantry, toilet and entrance from their workstation. The appropriate interpersonal distance ensures that the employees can easily approach to each other for communication of their works. In addition, the interpersonal distance is not too close so that the privacy of the employees remains secured.

On the other hand, the lowest-rated physical element was two-dimensional (2D) horizontal and vertical layout in working space for both Office A and Office B. The mean scores of this physical element in Office A and Office B are 2.75 and 2.77 respectively. They are below average. According to the interview respondents of Office A and Office B, their working spaces are not decorated with attractive colour and not provided with variety in floor and ceiling colour. This creates an environment that is dull and gloomy, which then discourages productivity and implicate negative influence to the employees.

According to the result of the ranking analysis, the other four physical elements are ranked differently between Office A and Office B as follows:

- Workstation characteristics – ranked second in Office A ($\bar{x} = 3.51$); ranked fifth in Office B ($\bar{x} = 3.74$).
- Space seating and arrangement – ranked third in Office A ($\bar{x} = 3.32$); ranked fourth in Office B ($\bar{x} = 3.82$).
- Furniture and equipment – ranked fourth in Office A ($\bar{x} = 3.17$); ranked third in Office B ($\bar{x} = 3.88$).
- Physical enclosures of workplace – ranked fifth in Office A ($\bar{x} = 2.97$); ranked second in Office B ($\bar{x} = 3.89$).

Generally, these four physical elements are rated above average (mean scores range between 3 and 4). With the exception of the physical enclosures of workplace in Office A, the rating is below average score of 3. The workstations in Office A are composed of 4-feet high partition board. Some of the interviewees deemed that the existing partition system is not efficient as it does not secure visual and acoustical privacy, yet it depresses communication among the colleagues. This argument opposes the current global trend of office design, which is the open design concept.

Table 2: Correlation between the physical elements in workplace and the employees' satisfaction with work

	Employees' satisfaction with work	
	Spearman's Rho Correlation Coefficient	Sig. (2-tailed)
Workstation characteristics	0.260*	0.045
Space seating and arrangement	0.265*	0.040
Furniture and equipment	0.231	0.076
Two-dimensional (2D) horizontal and vertical layout	0.033	0.805
Physical enclosures of workplace	0.144	0.271
Interpersonal distance	0.349**	0.006

* Correlation is significant at the 0.05 level (2-tailed).

** Correlation is significant at the 0.01 level (2-tailed).

satisfaction with work, Spearman correlation analysis was executed. This correlation analysis is suitable to analyse ordinal data. Table 2 shows the result of correlation analysis between the physical elements in workplace and the employees' satisfaction with work for combined data of the two case studies.

In fact, a good working environment is likely to increase the satisfaction with work. Thus, a positive correlation between the physical elements in workplace and the employees' satisfaction with work is expected in the outcome of the analysis. Of the six physical elements in work place, the following three are significantly correlated to the satisfaction with work:

- Workstation characteristics ($r = 0.260, p < 0.05$)
- Space seating and arrangement ($r = 0.265, p < 0.05$)
- Interpersonal distance ($r = 0.349, p < 0.05$)

Workstation is the key for an individual who spend most time in their workplace to conduct the job tasks and responsibilities. Therefore, the workstation characteristics are crucial to comfort, safety and health, and reducing fatigue. Inevitably, all these aspects would influence the satisfaction with work and worker productivity as revealed in the results in Table 2. For instance, comfortable seating, appropriate workstation size and adequate lighting are critical to support the worker performing the tasks in a quality environment (Hua et al., 2011). In relation to the findings, some of the interviewees responded that the flexible workstation is a good idea in office design. The flexible workstation allows the individual employee to modify the workstation to his or her preference, like adjustment of seat height, partition height, control of lighting, etc. Subsequently, the employees are able to focus and perform well in their tasks at their preferred working environment.

Then, the office layout is usually determined by the nature of business. Typically, the office layout design takes both ergonomics and workflow factors into consideration (Chandrasekar, 2011). These include the spatial needs, proximity relations, as well as arrangement of the IT infrastructure and furniture (IJmker et al., 2008). In this study, the results

in Table 2 demonstrate that the space seating and arrangement is significantly correlated to employees' satisfaction with work. This result supports the argument of Shafaghat et al. (2015), stating that the layout design of an office is likely to affect the employees' attitude. In general, the availability of communication and privacy is always contrasted. Numerous interviewees suggested that balance between the communicability and privacy must be obtained. As an example, if the workstations are open design, sufficient meeting rooms or spaces with privacy are then required for the purpose of meeting clients or conducting confidential meetings.

As many tasks in the office involve teamwork, accessibility allowing easier communication among the employees is necessary (Sundstrom and Sundstrom, 1986). This communication includes discussion of works, requesting or providing assistance from and to colleagues, and sharing of information. The interpersonal distance is chair-to-chair distance to the nearest co-worker and the perception of the separation or closeness of space and time between workers (Hua et al., 2011). The results in Table 2 indicate that the interpersonal distance is significantly correlated to the satisfaction with work. Since Hua et al. (2011) mentioned that interpersonal distance includes distances from individual workstation to co-workers' workstation, to the nearest meeting space, and to shared areas like printing area and pantry, the recommendations from the interview respondents on these aspects were requested. A majority of the respondents provided recommendations as follows:

- The distance between individual workstation to co-workers' workstation should be close enough for the ease of communication.
- The distance from individual workstations to meeting spaces should be adequate to avoid noise disturbance while securing the privacy.
- The distance from individual workstation to shared areas should be isolated to avoid disturbance.

As a result, the significant relationship between the physical elements in workplace and the employees' satisfaction with work is confirmed. In order to ensure the employee satisfaction and maintaining

productivity, it is crucial to take into consideration the office layout design, particularly the physical elements like workstation characteristics, space seating and arrangement, as well as interpersonal distance. However, the research findings reflect some contradictions with the typical office space design developed via other researches, such as the privacy level in the workplace. Thus, it is of paramount importance to understand the needs of individual staff in designing an office layout.

5.0 CONCLUSION

This paper examines the significance of workplace design on work performance and productivity by examining the relationship between the importance of physical elements and overall satisfaction with work. Employees' satisfaction towards the physical elements in each case study is investigated. The correlation in the results demonstrates that the physical elements in workplace have a positive correlation with the employees' satisfaction. Therefore, it can be concluded that a good environment is likely to increase the satisfaction with work. Three significant physical elements in workplace design correlated to the satisfaction with work are workstation characteristics, space seating and arrangement as well as interpersonal distance. This study reveals that flexible workstations in office design allow individual employees to modify the workstation at their own preference. Nevertheless, the office layout must obtain balance between the communicability and privacy, with closer distance between workstations for the ease of communication, adequate distance between individual workstations and meeting spaces and isolated shared areas for privacy and to avoid disturbance. In Malaysia, the research results reveal slight differences from the global trend. The office staffs prefer a higher degree of privacy in their workspace. This is indeed in line with the safety procedure to prevent the recent spread of COVID-19 by having adequate distance among individuals. Therefore, it is advisable to understand the work culture of different countries or even organizations when designing an appropriate office space. Meantime, the safety precautions on preventing the spread of COVID-19 must be taken into account. It is recommended to carry out further study in regards with the impact of COVID-19 pandemic. ■

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PRIVATISATION OF AMANAH HARTA TANAH PNB (AHP) TO BECOME AN UNLISTED REIT

TING KIEN HWA

1.0 INTRODUCTION

On 8th December 2020, unit holders of AHP has voted in favour in a unit holders meeting for a proposal from a wholly owned subsidiary of PNB supporting unit redemption from selective unit holders at RM1.00 for each existing AHP unit. After the redemption and cancellation of the AHP units, the listing status of AHP will be withdrawn from Bursa Malaysia thereby turning AHP into an unlisted REIT. The purpose of the proposal is to facilitate the restructuring and rebalancing of AHP property portfolio.

2.0 AHP UNDER THE LISTED PROPERTY TRUST (LPT) REGIME

Property securitisation in the form of property trust was first introduced in Asia by Malaysia with the initial offering of Amanah Harta Tanah PNB (AHP) as an unlisted property trust on 21 March 1989. AHP units were offered for sale at RM1.00 per unit on its initial public offering (IPO) on 21 September 1990 followed by the listing of AHP on 28 December 1990 on KLSE.

The *Guidelines on Property Trust Funds* prepared by Securities Commission regulated the property trust industry. The first listed property trust on KLSE is the listing of Arab Malaysian First Property Trust (AMFPT) on 23 Nov 1989. Subsequently two other LPTs are listed i.e. First Malaysia Property Trust (FMPT) and

Maybank Property Trust Fund 1 (renamed as AHP2 after PNB is the majority shareholder of Maybank). By 1997, four property trusts (i.e. AHP, AMFPT, FMPT and MPTF1) were listed on KLSE.

Overtime FMPT and AHP2 has been delisted whilst AMFPT and AHP had converted into a REIT under the REIT regime.

The portfolio of AHP during its initial listing years is comprised of direct properties, property related shares, non-property related shares and money market instruments. Figure 1 shows the investment portfolio of AHP. Capital gains on sale of shares have contributed significantly to the income of AHP (refer Figure 2). The share investment of AHP has also contributed towards the increasing net tangible asset (NTA) of AHP till the Asian Financial Crisis in 1997/8 (refer Figure 3).

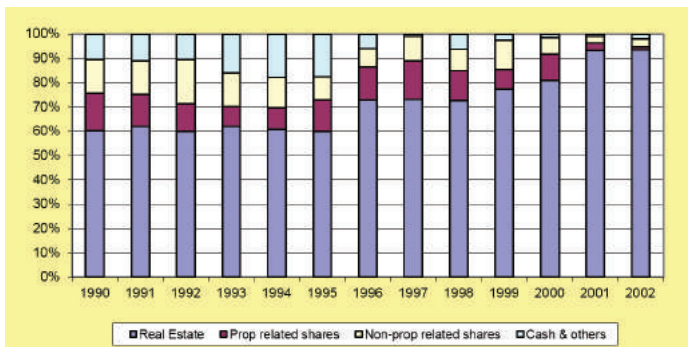


Figure 1: Investment portfolio composition of AHP

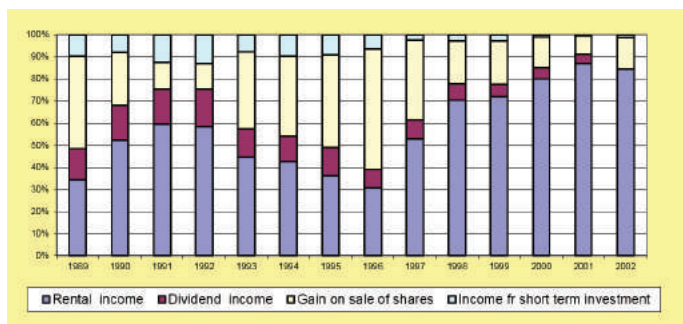


Figure 2: Sources of income of AHP

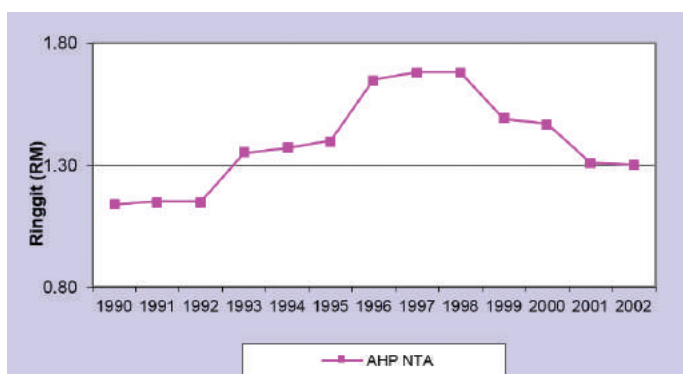


Figure 3: Net tangible asset of AHP

AHP has enjoyed a phenomenal spike in price on the last leg of the stock market bull run in 1993 (refer to Figure 4). It was rumoured that Maybank headquarters will be injected into AHP.

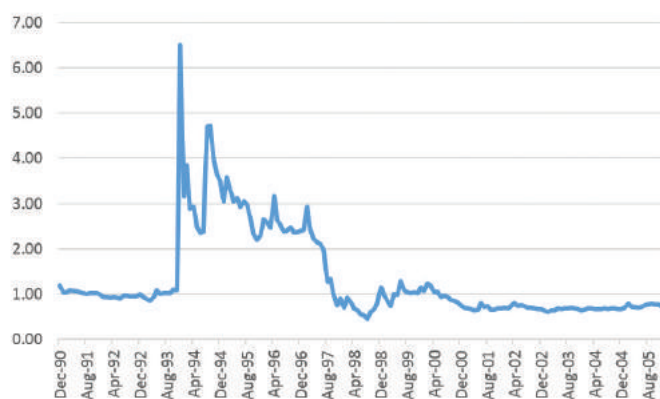


Figure 4: Monthly closing prices (RM) of AHP under the listed property trust regime (Dec 1990 to Dec 2005)

Under the LPT regime, the property trusts are sponsored by financial institutions. However banks as sponsors are generally lacking of catalysts to make LPTs a success. Thus property portfolios of LPTs under this regime had hardly expanded. Also the lack of tax transparency and tax waivers on

property acquisitions had constrained the growth of LPT during this 1989 to 2004 LPT regime era. The poor outlook for the LPT industry cause a lack of interests from institutional investors on this asset class.

3.0 AHP UNDER THE REIT REGIME

REITs did not exist in Asia prior to 2001 but appear as Listed Property Trusts in Australia, New Zealand and Malaysia. The main impetus behind the creation of REIT in Asia was the 1997 Asia Financial Crisis. Many corporations were saddled with huge debts and undervalued real estate. Regulators viewed REIT as a feasible route to recapitalise corporate balance sheet and to revitalise the property market.

With increasing popularity of REITs worldwide, a new Guidelines for REITs are introduced in 2004. The new guidelines provided RPGT waiver and stamp duty exemption for properties injected into the REITs. Tax transparency are also introduced to reduce the effect of double taxation on the dividends declared by REITs.

AxisREIT was the first REIT launched in 2nd August 2005 followed by Starhill REIT (15 Dec 2005) and UOA REIT (29 Dec 2005). By 2008 there are 11 new REITs listed under the REIT Sector with an equity market capitalisation of RM4.7 billion and more than RM 7.4 billion assets under management. A withholding tax of 10% is imposed on income distribution.

But despite the favourable regulatory terms under the REIT regime, the portfolio of AHP has remained more or less the same. AHP has merely carried forward its portfolio of office buildings and several shopoffices from the LPT era into the REIT era. It has only bought a hypermarket in 2015. AHP started to divest all its shopoffices in 2018 and the transactions are completed in 2019. Only three properties remained in the current AHP property portfolio: Plaza VADS, Bangunan AHP and Mydin Hypermarket Seremban 2 (refer Figure 5).

However the prices of AHP has undergone a gradual decline from RM1.18 in March 2015 to RM1.01 in November 2016. Since then the prices

have gone below RM1.00 to RM0.66 in August 2020 (refer to Figure 6). AHP prices improved after ORE announced on 18 September 2020 its proposal of selective unit redemption at RM1.00 and conversion of AHP to an unlisted REIT.



Figure 6: Monthly closing prices (RM) of AHP under the REIT regime (Dec 2005 to Nov 2020)

4.0 CONSTRAINING FACTORS

In view of the declining prices, on 18 September 2020 Ombak Real Estate Sdn Bhd (ORE), a wholly owned subsidiary company of PNB proposed to convert AHP to an unlisted REIT. Among the reasons, PNB choose to privatize AHP are:

(a) property market condition

The current property market is soft with oversupply and high vacancy rates in both the office and retail sectors which AHP has exposure. AHP portfolio is facing headwinds to maintain its occupancy rate and rental rates which will affect its income distribution.

In the short term, the contraction of the economy and the impact of Covid-19 pandemic has led to lower business activities and lower income for AHP. The manager of AHP has to give rental waiver/ discount to its tenants during the Movement Control Order (MCO). The 1st and 2nd quarter financial results for 2020 are evidence on this negative impact. It will be difficult for AHP to maintain the same level of income distribution in the near term.

(b) small portfolio size

Despite an asset size of RM457.5 million, the market capitalization of AHP at 31 December 2019 is only RM168.3 million. This deeply discounted price to NAV has severely affected the ability of AHP to undertake property acquisition to expand its portfolio size. The long term downward price trend of AHP since 2015 has also affected the ability of AHP to make yield accretive property acquisitions.

(c) regulatory requirement

The *Guidelines on REITs* restrict the gearing to 50% of asset value of a REIT. Although the gearing ratio has been increased to 60% during the covid-19 pandemic, this is of little impact for AHP which has the smallest market capitalization and asset size. With an existing gearing ratio of 35.69% after the acquisition of Mydin Hypermarket has also make AHP difficult to make further yield accretive real estate acquisitions. AHP would have difficulty to raise adequate funds from the capital market to acquire new properties.

(d) AHP units are thinly traded

As a thinly traded security with a small market capitalization, AHP is not attractive to institutional investors. Any fund raising exercise to finance any acquisition or expansion plans would not be attractive to institutional and retail investors either through a rights issue or placements or debt raising/ borrowings from the debt market.

5.0 IS THE PROPOSAL AND OFFER TO PRIVATISE AHP FAIR AND REASONABLE?

Affin Hwang IB in its independent advice letter to unit holders concluded that the offer of redemption under the proposed conversion is considered as “not fair but reasonable”.

Based on the NAV, the value of AHP is RM1.2568 but the offer is at RM1.00 which represent a discount of RM0.2568 or 20.43% to the estimated NAV per AHP unit. Thus Affin Hwang IB viewed the offer price as not fair.

But Affin Hwang IB viewed the offer as reasonable for the following reasons:

- (a) the offer price is higher than the past prices achieved by AHP for the past one year
- (b) AHP units are thinly traded which imply large investors would have difficulty to exit without adversely affecting the market price
- (c) the total income distribution of AHP is RM2.15 per unit since the listing of AHP on 28 December 1990.
- (d) the key stakeholders/shareholders i.e. PNB, Ombak Real Estate and ASB owns 46.07% interest in AHP which have significant influence on any ordinary or special resolution which require approvals from unit holders.

6.0 FURTHER ARGUMENTS AS TO WHY THE OFFER PRICE IS NOT FAIR

The author has offered the following arguments:

- (a) REIT is an investment option for long term holding for investors to earn a reasonable income and capital appreciation on its unit prices. During the initial IPO/listing, AHP is subscribed at RM1.00. If the offer price is RM1.00, it means investors who hold for long term from IPO/listing would not have enjoyed any capital appreciation and had merely received income distributions (refer Figure 7).

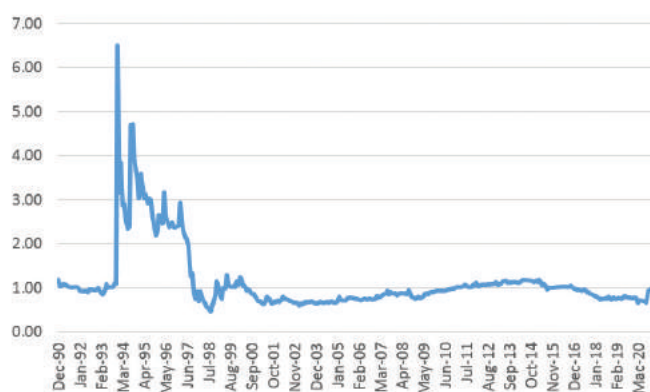


Figure 7: Thirty years of AHP monthly closing prices (RM) since listing (Dec 1990 to Nov 2020)

This defeat the purpose of AHP as a REIT for investors to enjoy consistent income distribution and unit price appreciation.

- (b) If AHP is an unlisted REIT, unitholders are eligible to redeem their units at NAV i.e. RM1.2568. This means under the current offer investors, especially retail investors, have been deprived of redeeming their investments at NAV.
- (c) For the past few years, AHP had disposed several properties with capital gains. Unitholders have not been able to enjoy any of these capital gains. Perhaps management should consider declaring bonus units to unitholders based on the capital gains before the privatization exercise.

It is suggested that in addition to the offer price, AHP is to distribute the capital gains from the earlier property disposals to unitholders in the form of bonus units prior to the delisting exercise.

7.0 CONCLUSION

As a listed property investment option that primarily invest in direct property for more than 30 years, AHP has not performed to meet its target objective of providing to its unit holders a reasonable level of income return and to gain from capital growth through the acquisition of selected portfolio of real estate investments with long term growth potential.

The performance of AHP provides an insight into the performance of a listed REIT held over a long term from Dec 1990 to Dec 2020.

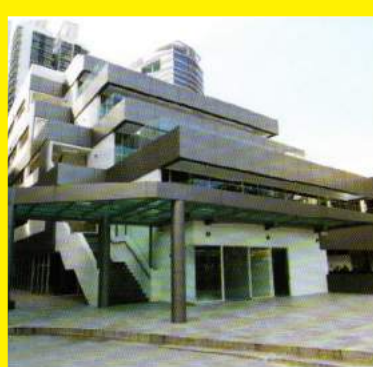
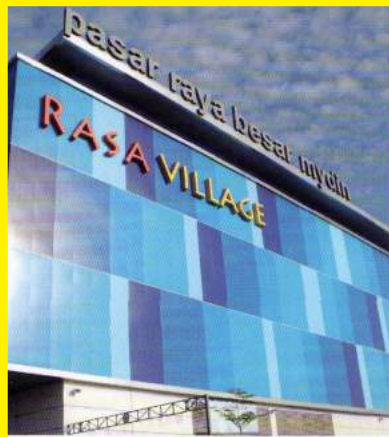
It will be interesting to note whether PNB will inject its group properties into AHP before resuming its listing status on Bursa Malaysia. ■

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AMANAH HARTA TANAH PNB

Annual Report 2019



INNAB SALIL & ORS V. VERVE SUITES MONT KIARA MANAGEMENT CORPORATION (2020) 6 MLRA

FEDERAL COURT, PUTRAJAYA

DATE: 5 OCTOBER 2020

Keyword: Airbnb, House Rule, Strata Management Act 2013

BACKGROUND

The Verve Suites (“VS”) development in Mont Kiara was built on land categorised for “Building” with the express condition that the land was to be used for a commercial building with service apartments and commercial use. The defendants leased out their units in VS to the 1st and 2nd appellants (1st and 2nd defendants in the High Court) who managed a short and long-term rental enterprise of units in VS. The respondent (plaintiff in the High Court) was the management corporation (MC) of VS and was incorporated under the Strata Titles Act 1985 (“STA 1985”) to maintain and manage VS.

In an Extraordinary General Meeting (“EGM”), the MC passed a resolution – House Rule No 3 (“HR3”) with an overwhelming majority to prohibit entirely all forms of short-term rental activities involving units in VS. The MC duly notified the residents of VS of the implementation of HR3. But the defendants continued to engage in short-term rental activities. The MC filed a writ action in the High Court to injunct the defendants from breaching HR3 and to enforce the same.

In the High Court, the parties agreed to try the following question of law: whether the respondent’s enforcement of HR3 had violated s 70(5) of the Strata Management Act 2013 (“the SMA 2013”).

The respondent maintained that it had the power to regulate and even prohibit entirely short-term rentals through HR3. The defendants contended that their right to rent out their premises short-term was allowed under the ambit of “any other dealing” prescribed in s 70(5) SMA 2013. The High Court decided the question of law in the respondent’s favour. The defendants appealed to the Court of Appeal, which upheld the decision of the High Court and dismissed the defendants’ appeal.

ISSUE

Four defendants (“the appellants”) obtained leave to appeal to the Federal Court on two questions of law:

- (a) for the Federal Court to determine whether House Rules could override and supersede the express land use of the title imposed by the State Authority under s 120 of the National Land Code (“NLC”)
- (b) whether the respondent’s enforcement of HR3 was in violation of s 70(5) SMA 2013.

(A) CONFLICT BETWEEN S120 NLA AND SMA 2013

A statute was said to be a “social legislation” when Parliament passed the statute for the intention to ease or facilitate the affairs of, or protect a certain

section or group of persons. The SMA 2013 is a social legislation as it was passed to facilitate the affairs of strata living for the good of the community or owners of the strata property units. Being social in nature, the provisions of the SMA 2013 which safeguarded community interests, ought to receive a liberal interpretation and not a restricted or rigid one. Where two different interpretations were possible, it is the one that favoured the interest of the community over the interest of individuals that would be preferred.

To resolve the apparent conflict between s 120 NLC and s 70 SMA 2013, the provisions must be read harmoniously such that they did not diametrically contradict each other. The effect of harmonious construction of these two provisions was that: the grant of powers or rights by one particular provision in a law did not mean that such rights might not at the same time be restricted by other provisions of the law. Hence, simply because the State Authority had issued conditions and restrictions of use in the title of land, that would not preclude a management corporation from promulgating further rules, regulations or by-law for the purposes provided for by law, in particular the purposes stipulated in s 70(2) SMA 2013.

Even if a particular statute conferred a certain right or interest in land, such right was not unfettered and was capable of regulation for specific purposes. By-law passed pursuant to s 70 SMA 2013 for the reasons stipulated in subsection (2) were justifiable on the basis that they existed for the good of the strata community. In the present appeal, even if the State Authority permitted the use of the land for commercial purposes, such use was still subject to other law in force, in particular s 70 SMA 2013. Hence, the passing of HR3 was not unlawful.

Although a letter dated 16 March 2018 from the DBKL had opined that so long as the condition of use of land was not purely for residential purposes there was no impediment to the defendants/appellants using their parcels for the purposes of short-term rentals, that letter merely represented DBKL's opinion or advice which was not binding and did not have any force of law. On the other hand, HR3

was passed in accordance with s 70 SMA 2013 which had the force of law. Thus, HR3 that was enacted in accordance with the procedure established by law would prevail over DBKL's advice or mere opinion.

Whilst the contents of HR3 might be reflective of the Deed of Mutual Covenants ("DMC"), its legal force was derived not from the contract but from the SMA 2013. The restrictions imposed by the House Rule were additional conditions for purposes of regulation under s 70 SMA 2013 and not for the purpose of revoking or altering any pre-existing express condition in the title of the land. Thus, the first question ought to be answered in the affirmative.

(B) TENANCY OR LICENCE

The term "tenancy" was used loosely to describe the relationship between a person who let out his premises, or a part of it (the landlord) to another person (tenant), for a consideration with the intention that the tenant would have **exclusive use** of it for an ascertainable period of time.

There are two different approaches/tests to distinguish between a lease or tenancy and a licence. The first test was the exclusive possession test. The second test was to determine the intention of the parties. In the second test, exclusive possession was still an important element but the courts were more concerned with whether the parties intended for their arrangement to constitute more than just a licence. The distinction between a tenancy and a licence was fundamental. A licence was merely a step above trespass in that it conferred a right to the occupier to enter or remain on someone else's land or premises for consideration, without committing trespass. A tenancy or a lease on the other hand granted more than mere contractual rights because it conferred certain other protections to the tenant under statute.

The Malaysian courts seemed to apply the two tests, ie the exclusive possession test and intention of the parties test together without distinguishing the two. It appears that the Malaysian courts preferred the second test, namely the intention of the parties test whereas the English courts preferred the first test –

THE PROPERTY MANAGER

the one of exclusive possession. It was not necessary to determine definitively which of the two tests was to be preferred. Both tests placed emphasis on the requirement of exclusive possession. Whether an occupancy was a tenancy or a licence would depend on the particular facts and circumstances of the case. There was no singular test to determine whether an occupancy was a tenancy or licence. The court would have to consider the whole circumstances of each case to determine the question of whether the agreement to occupy was a tenancy or a licence.

In concluding whether an agreement was a tenancy or otherwise, judges could not simply rely on the face of the language used. Instead, the nature of the obligations conferred under the agreement must be analysed. Upon considering the terms of the agreement, the court might examine the conduct of parties by way of extrinsic evidence to determine whether what was intended by them was a tenancy or a licence.

At all material times, the defendants/appellants had let out their premises to third-party vacationers or lodgers for commercial purposes. The purpose of the letting, as could be gauged from the terms of the Airbnb Terms of Service, suggested that the defendants intended their premises to be used like a hotel or a lodging facility. There was no proof by the defendants/appellants of exclusive possession on the part of short-term renters nor did the evidence suggest that the nature and quality of the

occupancy of the said renters was ever intended to be a tenancy.

The fact that the duration of stay was short in itself was not lack of proof of the creation of a tenancy, though the length would still be a relevant consideration in determining whether exclusive possession was conferred or whether the nature or quality of the occupancy was that of a tenancy. There was nothing in the documents to support the fact of exclusive possession. There was also no indication that the defendants and the short-term renters intended for the nature and quality of occupancy to amount to a tenancy.

The abovementioned arrangements were nothing more than mere licences and therefore did not amount in law to "dealings" within the ambit of s 70(5) SMA 2013. Accordingly, HR3 was not ultra vires s 70(5). Question 2 is answered in the negative where the short term rentals amounted to licences and not tenancies.

HELD

Dismissing the appeal with costs. ■

NOTE

The Legal Update is an abstract and edited for a general readership.

Readers are encouraged to read the case in full from its original source.

NEWS SNIPPET

MBPJ fines former JMB members for failing to submit financial documents and audit reports to MC

The Star 19 Dec 2020

TWO former members of a joint management body (JMB) in Petaling Jaya were issued a RM12,500 compound each under the Strata Management Act 2013 (Act 757).

Petaling Jaya City Council (MBPJ) issued the compounds on Dec 15 to the individuals when the JMB failed in handing over financial documents in a month and audited financial reports in a three-month period to the Management Corporation (MC). The compounds were issued under Strata Management Regulations (Compound Offences) 2019 that came into effect on April 2 last year, after receiving written approval from a deputy public prosecutor at Petaling Jaya Magistrate's Court on Nov 25.

MBPJ was the first local authority in Selangor and second in the country to have enforced the rule under Act 757.



INVESTIGATING THE PROPERTY OVERHANG SITUATION: POLICY ANALYSES

Royal Institution of Surveyors Malaysia, 2020, 110 pages,
ISBN 978967 1547618

Reviewed by:

TING KIEN HWA

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The current overhang issue has been around for a number of years in Malaysia. In the past the oversupply situation in each property cycle is overcome by the recovery and boom in the economy and property market. But this time around the oversupply is perceived as an overhang. This could probably be due to the current overextended property cycle. Distinctive property market downturns are observed in 1987/8, 1997/8 and 2007/8. But we did not observe one in 2017/8 hence the overextended property market.

It is peculiar to find the term 'overhang' applied more to the residential sector but seldom applied to the office and retail sector where oversupply also exist. The difference can be due to the residential units are for sale from the primary market whilst the newly completed office and retail spaces are available to let.

Whilst there is a natural vacancy rate for the commercial property sectors especially for the office occupation sector, arguably the same concept can be applied to the residential sector i.e. a natural overhang rate for residential sector. Such overhang rate refers to residential units which are normally difficult to sell for example units facing cemetery, TNB transmission lines, lift lobbies, units next to break water tank, expensive penthouse units etc. Perhaps the actual overhang figure should be total unsold units minus these natural overhang units.

The office natural vacancy rate is normally assumed to be 5% to take into account of expiry of leases at various time period, marketing time, space renovations before moving in by tenants etc. So what would be the natural overhang rate for residential properties?

This book is the outcome of a joint research project between Department of Valuation and Property Services, MoF (JPPH) and Royal Institution of Surveyors Malaysia (RISM) with the researchers coming from both organisations. Dr Rahah Ismail from RISM is the project leader.

The residential overhang issue has attracted many research studies using different approaches and perspectives. Some attempted it from the demand and supply angle, pricing mismatch, affordability, price to income ratios, oversupply etc.

This research makes a difference by looking at the micro level of the overhang issue at the state/district/city level rather than analysing from the aggregate data at the national level. A detailed analysis at the micro level provides better understanding of the issues and will provide a basis for policy making. This book, which is actually a research report, aims to examine the overhang issue to provide insights in terms of the types of property, the location of unsold properties, pricing of the unsold units, etc. However only three states i.e. Selangor, Johor and Malacca are selected for this study.

The control on supply side is examined from the role of development control carried out by the Department of Town and Country Planning. Whilst the study concludes that town planning should regulate oversupply, this may not be agreeable by the town planners as it touches on the fundamental issue of whether town planning should fetter with the dynamics and operations of the property market.

The supply of public housing from the public sector is also examined in terms of its role in affordable

housing supply. Also measures introduced by the government to ease the overhang situation is also examined. These include fiscal policies, monetary policies and policies on the purchase of properties by foreigners.

The overhang issue could be analysed from the property cycle perspective by looking at endogenous and exogenous factors. Endogenous factors to the property market could itself caused the oversupply. Such factors are imperfect property market, development lag, inelastic supply and behavioural aspects of the financiers and developers. Exogeneous factors from outside the property market may also contribute to the overhang e.g. interest rates, fluctuations

in income and employment and changes in government policies.

Overall, this book has provided insights to the overhang issue and give directions on policy formulation. It certainly has contributed towards a better understanding of the overhang issue.

The font size used in this book is simply too small and with single spacing, the book is a pain to read especially for the seniors.

There is also a lack of an index on the many different keywords, terms, phrases, subject matters etc. that readers would like to locate quickly in the related pages. The absence of an index denies the reader to find the necessary useful information. ■



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DATE: 12 JANUARY 2021

TIME: 9.30AM – 12.00PM

PROGRAMME

9.00AM : REGISTRATION

9.30AM : LIFT SAFETY BY TUAN AHMAD NAZRI

10.30AM : FIRE PREVENTION BY TUAN MOHD HAIKAL

11.30AM : FORUM ON
LIFT SAFETY AND FIRE PREVENTION

12.30PM : END DISCUSSION

FEES: MIPFM MEMBERS – RM 60.00

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