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A new beginning

The industrious Ox will replace the virus-infested Rat as the animal zodiac for the next Chinese Lunar Year. Will the Ox usher in a better year for the property market? Find out on pages 4 and 5.

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Bringing celebration to the people

Sunway City Iskandar Puteri livens up the CNY festive

CHINESE New Year is the biggest holiday celebrated among the Chinese community. It is often referred to as the spring festival because it signals the beginning of spring.

It is a time when families and friends get together to say goodbye to the old and welcome the new.

However, with the new norm and reimplementing of the movement control order, it is hard for everyone to return home to celebrate Chinese New Year with their families and friends.

As a Master Community Developer, Sunway City Iskandar Puteri will be organising various activities within its Sunway Big Box Mall and Sunway Citrine Hub exclusively for its customers. Nevertheless, the safety and health of every customer are of the topmost priority, hence, all activities and initiatives will follow strict SOPs. Community building plays a big portion for master community developer Sunway Property as Sunway City Iskandar Puteri is one of its largest township projects. With a gross development value of more than RM30bil, this development covers over 1,800 acres of land, offering a world-class city balanced with the beauty of nature, making it truly Nature's Capital City.

The low-density integrated township within Medini comprises 40% greenspace and 5km away from the Malaysia-Singapore Second Link via the Coastal Highway Southern Link.

Promotions in abundance

From Jan 8 to March 7, 2021, both Sunway Big Box Retail Park and Sunway Citrine Hub will be celebrating the Happy Niu Year in style, playing on the word niu, which means ox in Mandarin.

Sunway Big Box is Malaysia's first hybrid retail park, combining large retail formats and smaller retail formats to cater to the Johor community. The open-air strip mall environment will allow visitors to explore shopping and dining in a large and non-conventional ambience.

The retail centre, integrated with the upcoming 280-room Sunway Hotel Big Box and a 170,000 sq ft of net leasable area (NLA) office tower, is connected to a 32-acre extreme park component.

With a total development cost of RM242mil, this two-floor retail cluster spans across 500,000 square feet of NLA, offering close to 100 stores of retail, F&B and entertainment outlets.

Selfies and angpow gifts

Shoppers can snap a selfie with the Oxpicious Golden Ox, which is said to bring prosperity and luck this year, or craft their lucky charms to discover their good fortunes in the new year.

Make a wish at the golden Cherry Blossom Wishing Tree and with each wish made, Sunway Big Box Retail Park



The CNY decorations put everyone in a festive mood.



Visitors can snap CNY selfies at Sunway Big Box Retail Park.

will contribute RM5 to buy essentials or food for the needy in Johor Bahru in collaboration with The Lost Food Project.

From now until Feb10, 2021, shoppers can redeem an Oxpicious Angpow Set if they spend a minimum of RM288 (RM188 for new Sunway Pals members) in three receipts. These gift items can be reused as face mask pouches.

Spend a minimum of RM388 (RM288 for new Sunway Pals members) in three receipts to redeem an Oxpicious Plush Toy. There are four different types.

At Sunway Citrine Hub, a gigantic treasure box and Golden Ox takes centre stage to bring wealth and fortune in the Oxpicious year. Sunway Citrine Hub's boutique retail component, alongside its contemporary designer offices, serviced residences, gives residents and visitors an alternative shopping venue.

And while in Sunway City Iskandar Puteri, enjoy the serenity of nature with a stroll by the 20-acres Sunway Emerald Lake next to Sunway Citrine Hub. Discover what thousands of residents and their families already know - that this part of Iskandar Johor is destined to be one of the most livable townships down south.

Sunway City Iskandar Puteri is expected to have a population of 140,000 once the development is completed.

The development will be developed into six precincts containing The Capital, The Parkview, The Lakeview, The Riverside, The Seafront, and The Marketplace. And each precinct is designed to be a self-sustaining integrated city like Sunway City where convenient amenities are facilitated within the city itself to cater to the needs and wants of the residents.



There are four plush toy designs.

Currently, the developer will be completing the Sunway Grid Residence and planning to launch its latest residential duo-living landed homes aptly named Sunway Maple Residence. In addition, the developer will be opening its first Sunway Hotel Big Box in Johor this year.

Members of the public can also expect the opening of the first government Chinese school SJK (C) Cheah Fah and the completion of the Sunway Big Box office tower next year. Besides that, the development aims to open its second Starbucks concept store with a drive-thru facility. The master community developer will also be focusing on eco-tourism initiatives such as a new solar and farm project, XPARK's expansion for motorsports, and a global learning village in Sunway City Iskandar Puteri. 🏡



SUNWAY CITY ISKANDAR PUTERI

WISHES YOU A HAPPY CHINESE NEW YEAR

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Master Community Developer

Divining the property landscape post-2020

Year of the ox ushers in a slow but steady come back

By VIKTOR CHONG
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THE coming Chinese New Year marks the end of an inauspicious rat year, with the ox riding in under the backdrop of a deadly global pandemic. Since March 2020, the Malaysian property market has been hampered by the stringent movement control order, which is coupled with the subsequent measures to contain the virus.

But with the year of the ox around the corner, many people are rooting for this reliable and hardworking animal zodiac to turn the real estate sector. Where prediction is required by the Chinese, feng shui is applied to better understand the coming period.

According to feng shui consultant Stephen Chin, this science of environology is a combination of several texts written thousands of years ago, and there is no one formula to rule them all. Most of these have their basis in the I-Ching, the concepts of the Five Elements, the 3X3 Magic Square and the Heavenly Stem and Earthly Root, to name a few.

"If the predictions from these various methods tend to overlap and agree with each other, then it gives a strong indication that an event will occur. Conversely, predictions that do not overlap or agree often have a lower probability of happening," he said.

Going by the stem-root and sound consonance for the year, he said the year 2021 is a Yin Earth year. Logically, any sector or industry related to the earth element will do well, and these include agriculture, civil engineering, construction, property and real estate businesses.

Nonetheless, the earth element also contrasts or weakens the water element, which is related to banking and finance. Given that earth-based industries are very much tied to financing, this can be an issue.



"Now with the current economic state, it is not too far-fetched to predict that the property market may be bumpy," said Chin.



Against the backdrop of the pandemic, the banking and finance sector is likely to be put under pressure to perform. This may in turn affect the ability of developers to finance their projects and for buyers to get loans through conventional channels. "Creative and innovative financing mechanisms will need to be created to overcome this," he said.

Chin also warned against the possible occurrence of a pandemic separate from the novel Covid-19 virus which may happen this year. "This prediction comes from one of our formulas we use, written over 2000 years ago," he said. The poem for 2021 is a 16-character text describing the symptom of the disease, such as stomach ailment, diarrhea, weakening of the limb and death.

Auspicious dates

Not all is doom and gloom with the property market. Five Elements Mastery Plt feng shui consultant Joe Choo said certain periods in the coming year show promises, adding that the market is slowly picking up, although the sub-sale market is predicted to perform better than the primary market.

To predict these auspicious periods, Choo refers to the Chinese lunar

calendar, where every measurement of time such as year, month, day and time is made up of a pair of tian-gan and di-hi. The tian-gan and di-hi pair up to produce a sound consonant that represents an element, which is either wood, fire, earth, metal or water.



"Wealth is focused on the lunar month four and 12," said Choo.

She said lunar month four to lunar month six (from May 12 to Aug 7) marks a dynamic period for the property market as the sound consonant for these periods are metal. Here, the metal element brings out the goodness in earth, which represents the real estate sector.

Thereafter, the lunar month eight (from Sept 7 to Oct 5) is marked by the fire element which is also positive for the market. This is due to the attribute of fire which produces earth. Lastly, lunar months 11 and 12 (from Dec 4 to Jan 3) both hold earth elements that directly strengthen the earth industry.

Eight elemental directions

Choo further suggested Johor as an auspicious place instead of Penang, with its south-west position possessing the earth element. The eastern kingdom is also predicted to garner attention from foreign buyers. Following that is Perak, somewhere around the north-west region which is of the metal element, also conducive for real estate. Its performance is likely to surpass even that of Selangor.

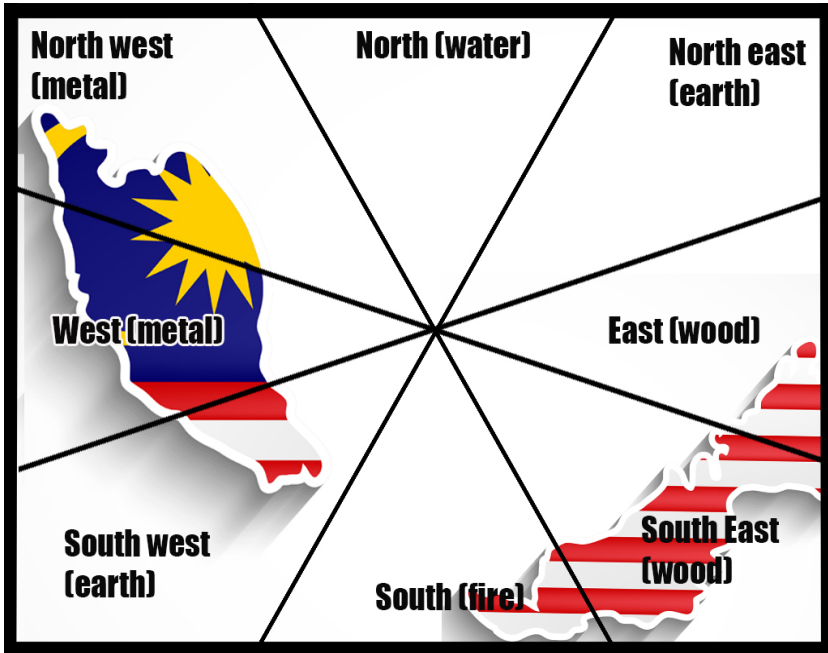
"The property market has always been very active in Selangor, and it still is, but don't expect too much if compared with Johor and Perak," she said, adding that the southern corner of Selangor is very auspicious.

Choo explained that the mountainous Titiwangsa range contributes to the main earth energy which flows from the north towards Johor, becoming more stable as it goes further.

"The property market has always been very active in Selangor, and it still is, but don't expect too much if compared with Johor and Perak.

— Joe Choo





ABOVE
Image shows the eight directions and their corresponding elements.

RIGHT
A standard Luo Shu with the number one facing north and six facing north-west)

4	9	2
3	5	7
8	1	6

There are many mountains branching away from the main body, producing gentle earth energy to the surrounding. The presence of small rivers stop and harness this energy into a homogenous pool which collects wealth for anyone living in the southern area of Selangor.

Chin corroborated that the states located in the north-west are likely to do well, but pointed out instead to Penang and by extension Kedah. Using the magic square technique or the Luo Shu, he said the gua for the year is six, and its natural position is in the north-west, which has the metal element. Since 2021 is an earth year, this is auspicious as earth produces metal.

Back to basics

Where homes are considered, Chin said general environment principles still apply and developments should always take into account the surrounding terrain.

Properties oriented to face the embrace of a river, lake or road, with hills supporting the back, will be most ideal. It is not recommended to have them directly fronting a hill or having a river behind.

Another feature that bears repeating is the effects of T-junctions on the home, especially if it is located directly

in the middle of the confluence. In feng shui, road traffic is similar to the flow of the river, and the stronger the traffic, the stronger the river flow.

However, residents can get positive energy from the river, unlike vehicular movements which are associated with pollution and stress. Homes in such locations experience a strong rush in energy coming from the road.

This sha chi, or attacking energy will negatively affect the energy of the whole house. The effect is exacerbated if the home in question is positioned at the edge of the road and is exposed, meaning that there is no landscaping or barriers to soften the flow of energy. On the other hand, a short road with minimal traffic channels less sha chi.

Chin further advised that house buyers need to choose properties that are suited to them. "The main entrance needs to be compatible with the master of the house. In my practice, as taught by my master before me, this is a make-or-break proposition," he said, adding that occupants who live in a house with a bad entrance enjoys neither peace nor prosperity in the long term.

Tangible benefits

Although feng shui is very much steeped in Chinese tradition

and beliefs, the other races in Malaysia would do well to observe it as properties that correspond with its tenets usually command a better market rate.

The basics of economics apply here where a property that enjoys a higher demand experiences higher capital appreciation, price, rental yield and rate. Since the Chinese community makes up a significant portion of Malaysia's population, it is simply good business acumen to also cater to their preference. As much as feng shui discusses the intangible, its effects have been proven to be very much tangible. ↗

"Occupants who live in a house with a bad entrance enjoys neither peace nor prosperity in the long term."

– Stephen Chin

Investors remain optimistic towards hospitality sector

THE recent Malaysian Hospitality Investment Intentions Survey conducted by global property consultant Knight Frank Malaysia reveals positive signs pertaining to the ailing hospitality industry that has been badly hit by the Covid-19 pandemic.

Almost half of the respondents remain positive about the hospitality sector outlook in the next 12 months, with 45% feeling that the sector is on its way to recovery, albeit contingent on the progressive roll-out of the vaccine and opening up of international travel restrictions.

The survey analysed the investment perspectives of hotel owners, operators and owner-operators, providing insight on investment demand, investor preferences and pricing.

Moreover, the survey reveals that 14% of the respondents anticipate buying hotel assets within the next two years, while 16% look to make an acquisition even sooner within the next 6 months despite the pandemic.

"Well capitalised, shrewd investors are looking beyond the pandemic and see this as an opportunity to acquire prime hotel assets at more reasonable pricing. We believe prices for Malaysian hotels that trade will reflect a 10-30% discount from their pre-Covid values,"

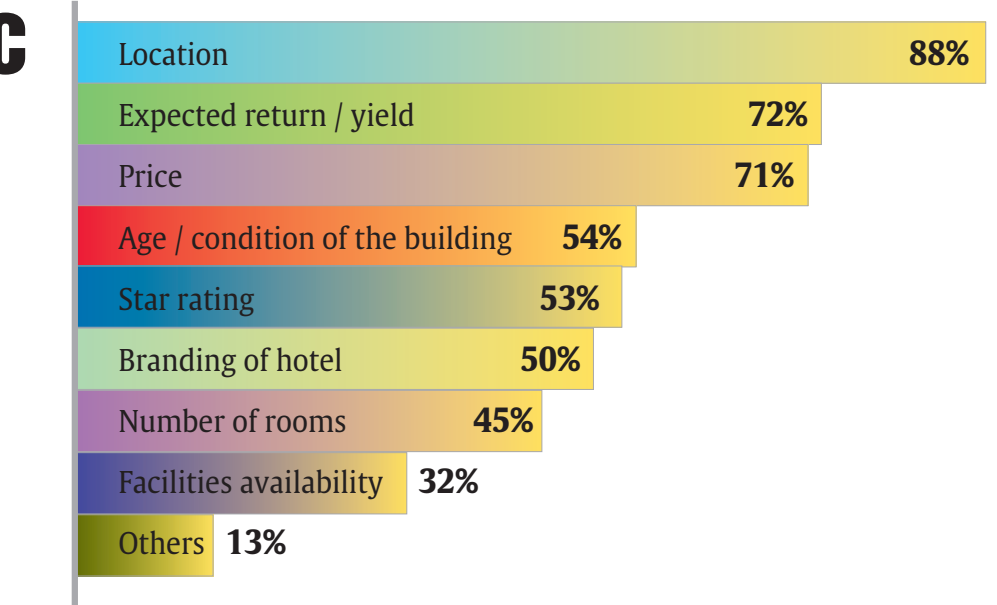
said Knight Frank Malaysia capital markets executive director James Buckley.

In Southeast Asia, Malaysia is ranked 3rd as the most attractive country for hotel investment, after Thailand and Singapore. Several criteria were highlighted as important factors when choosing to set up a hotel operation in a country.

A total of 89% of the respondents indicated that tourist arrivals and flight accessibility are crucial in their investment decision-making process. This was followed by friendly government initiatives which play an important role in motivating hotel operations and investments as it cushions the impact of market sentiment.

Buckley added: "Tourism is an important sector as it is the third largest contributor to the economy and employs about 3.6 million people. Before the pandemic hit, it contributed a total of RM86 billion in tourist receipts from about 26 million international visitors in 2019.

"Upgrading, expanding and improving direct international flights to Penang and Langkawi, in particular, would provide a real boost to tourism. Langkawi is a fantastic tourist destination with great potential to grow its international tourist arrivals and receipts and compete on the same footing as Phuket, Bali and the Maldives. To achieve



Source: Knight Frank

this, it needs to improve its regional flight accessibility."

Location is considered the most important factor by respondents when investing in a hotel. The next factor considered by 72% of respondents was the expected returns. Many investors are now seeking higher returns to offset the risk of investing in the sector during the pandemic with 36% of respondents targeting a net yield of above 7%.

As a consequence in 2020, the volume of hotel transactions across Malaysia fell by 36% compared to the 10-year annual average. The availability of bank financing for hotel transactions has been significantly curtailed

which has also played a factor.

During these challenging times, investors are increasingly looking towards yield accretive assets, said Knight Frank Malaysia valuation and advisory executive director Justin Chee.

"As shown by the sentiment survey, the majority of respondents (36%) expect a net return of above 7% from the hotel asset class. It is important to note that based on the past few hotel transactions (in the past 5 years) hotels in Malaysia were generally transacted at net yields of about 4% to 6% and there is definitely a mismatch between the expected return and the selling prices of hotels," he said. ↗

A milestone decision finally set

Verdict on collection of booking fees and CCC made

Contributed by **CHANG KIM LOONG**
WONG RENN XIN

In a landmark decision on Jan 19, 2021, the Federal Court has delivered its grounds of judgement in respect of the case of PJD Regency Sdn Bhd vs Tribunal Tuntutan Pembeli Rumah & Ors. It has finally clarified the legal position as to when time starts to run, in respect of vacant possession (VP) of the property.

Though this issue had earlier been decided by two Supreme Court cases in *Hoo See Sen & Anor vs Public Bank Bhd* and *Faber Union Sdn Bhd vs Chew Nyat Shong & Anor*, the legal position had remained unresolved for 32 years before it was revisited again recently.

National House Buyers Association (HBA) volunteer lawyers, led by Datuk KL Wong and Wong Renn Xin, working on a pro bono basis, had taken up this case for Wong Kien Choon and Ng Chee Kuan against their developer, PJD Regency Sdn Bhd. HBA held a watching brief by lawyers Viola De Cruz and Koh Kean Kang.

The purchasers had paid a booking fee of RM10,000 to the developer earlier but the sale and purchase agreement (SPA) was only executed two months thereafter by the developer. The SPA stated VP to be within 42 months from the date of the agreement.

Upon late VP, the purchasers made a claim in the Tribunal for Homebuyers Claim based on the date the booking fee was paid. The Tribunal awarded the sum claimed by the purchasers.

The developer then filed a judicial review application with the High Court, followed by the Court of Appeal, but both were dismissed.

The developer then filed an appeal to the Federal Court on the following questions of law.

Question 1

For the purpose of ascertaining the date of VP or completion of

common facilities under a statutory agreement prescribed in the Housing Development (Control & Licensing) Regulations, 1989 (Regulations) made pursuant to the Housing Development (Control & Licensing) Act, 1966 (Act), whether the date when time starts to run is the date of the agreement notwithstanding the decision of the Supreme Court in the two earlier cases.

Question 2

For the purpose of ascertaining the date of completion of common facilities under a statutory agreement prescribed in Schedule H and J of the Regulations, whether the relevant date is when the prescribed architect certifies they are completed.

The Federal Court highlighted the Third Schedule (Schedule of Payment of Purchase Price) of the SPA, which clearly states that the SPA should be dated on when the first payment of 10% is made by the purchaser.

Thus, speaking in ideal terms, if the law is strictly complied with, there is no question as to whether the date of calculation of the Liquidated Ascertained Damages (LAD) runs from the date of payment of the booking fee or from the formal date of the agreement.

However, in order to circumvent this rule, the developer had split the payment of 10% into two parts (2% and 8%). The reason was to ensure the SPA was not dated when the developer collected the 2% but only when the balance 8% was collected. This would reduce the amount of LAD the developer had to pay the purchaser.

The developer did so in spite of the fact that Regulations 11(2) expressly prohibits all types of collection of any form of payment from the purchaser before the SPA is signed.

The scope of prohibition is wide enough to include estate agents, lawyers and any third parties purportedly acting as stakeholders for the housing developer in respect



of collection of the booking fees.

It is clear that developers are not allowed to collect any payment from purchasers before the SPA is signed. Yet, it does not seem to deter many developers.

There remains to be a plethora of cases involving the issue of collection of booking fees by developers because of the lack of enforcement.

Criminal offence

In fact, it is a criminal offence to collect booking fees as stipulated in Regulations 13(1): "Any person who contravenes any of the provisions of these Regulations shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand Ringgit or to a term of imprisonment not exceeding five years or to both."

Chief Justice Tun Tengku Maimun Tuan Mat had this to say: "If it is the developer's attempt to secure an early bargain through the collection of booking fees, then the protective veil cast by the legislature over the purchasers should operate in a way so as to bind the developers to the booking fees. In this way, the developer would have to bear the full extent of the LAD payable to them to the purchasers consistent with the overall intent of the written law in respect of late VP."

The objective of the Act and its regulations is to protect the purchaser who is in a more vulnerable position due to inequality of bargaining powers. If this mischief of collection of booking fees, which is legally prohibited, is not corrected, it would be a retrospective step for the protection of the unsuspecting purchasers and their rights would be severely eroded.

Thus, in answering Question 1, the Federal Court held the following: "Where there is a delay in the VP by a Developer to the Purchaser in respect of scheduled contracts, the date for calculation of LAD begins from the date of payment of deposit or booking fee or initial fee or expression of

intention to purchase and not from the date of the SPA literally."

The second question is whether the developer can be deemed to have delivered common facilities to the purchaser upon the issuance of the Certificate of Practical Completion (CPC) and not the Certificate of Completion and Compliance (CCC).

Reverting to the principles of interpretation of social legislation, the Court is required to construe the statutory contract in a manner most favourable to the purchasers. It is clear that the SPA only refers to one type of certification, namely the CCC. This CCC issued by the architect is required for the VP to the purchasers.

Tengku Maimun held the following: "It cannot be the intention of the legislature to refer to one standard in respect of VP and another standard in respect of the completion of common facilities. Furthermore, CCC is a legal requirement imposed by law which will be issued upon the developer complying with all regulatory laws such as the Street, Drainage and Building Act, 1974. This affords protection to purchasers who can rest assured that the relevant authorities have approved the construction. The same cannot be said in respect of the CPC or any other such documents not amounting to a CCC."

Hence, it is clear from the decision that common parcels and facilities ought to be completed and handed over to the buyers simultaneously and not separately.

Completion of common facilities must be in tandem with the completion of the property itself, as the purposes of the common facilities are for the use and comfort of the purchasers. 📌

Chang (centre) with the volunteer lawyers (from left) Koh, De Cruz, Wong and Renn Xin.



This article is jointly written by Wong Renn Xin, one of the legal advisors of the HBA and Datuk Chang Kim Loong, honorary secretary-general of HBA, a voluntary non-government and not-for-profit organisation manned wholly by volunteers.

Where there's business, there's real estate

Cooperation strategy mutually benefits landlords and business owners



Contributed by **ALAN POON**

THE curtain has drawn a close for the year 2020. Looking back, there were many lessons learnt and therefore we can expect to put them into good use as we move ahead for 2021.

As the Covid-19 cases continue its spike, the local economy remains uncertain to say the least. Moreover, the country's borders are still closed.

In critical times as such, extraordinary measures are pivotal to the changing landscape. Real estate industry is no different.

While it is likely that we have hit the bottom, the good news is that here on we should see much heightened activities that will provide plenty of opportunities in both the business world as well as the real estate sector.

Cooperation strategy

As much as businesses requiring venues to operate, from hotel buildings, office towers, retail outlets to shop lots, many landlords do not see beyond just the rental of a tenant's business.

Their focus hinges on immediate monetisation alone. Very rarely would the owner get involved in the business to ensure the sustainability of their rental

yield, which seems pretty abnormal.

Now, imagine if these owners can see beyond just the landlord-tenant relationship and get themselves to cooperate with creative entrepreneurs who do not mind sharing their revenues in return?

Wouldn't these synergies be a step forward to ensure sustainability for the performance of the rental income?

While once we may argue and see this as a risk since there are covenants to be fulfilled in the legal instrument in the form of a tenancy agreement, the possibility of such symbiotic relationship would definitely hinder both parties from any breach as the key goal established from the onset would be on the success of the business model.

As a matter of fact, this should be on the checklist of every property landlord when selecting the right tenants as an assurance of affordability!

By implementing a cooperation strategy between the business operator and the real estate owner, a whole new paradigm can be unlocked. Do not forget that a property can even be refinanced by the owner to release liquidity and reinvesting back into a profitable and matching business by the tenant where the owner may not have the expertise to run or operate them in the first place while getting the property valued higher with long term tenancy and business viability.

Asset turnaround: A new trend

In more recent times, we have seen many traditional hotel buildings converted into co-living accommodation where rooms are rented with common facilities but for longer-term for the occupants. In short, there is a need to reorder and redraw the real estate industry into unlocking its own value, by redeveloping the internal structure and the business model from inside out.

In the It's not all gloom and doom article published last year, I specified the need for different perspectives to turn negatives into positives ideas and introduced wellness real estate as a potential sub-sector in the real estate scene in Malaysia.

There are untapped markets where assets can be repurposed for a niche market, thereby unlocking opportunities to yield better business profitability.

From the above, it is evident that there is a need for a paradigm shift between owners and occupants as it takes two hands to clap. Some major key success factors for asset turnaround consist of criteria as follow:

- Asset owner's willingness to understand and explore new business models.
- Occupants are able to access the asset owner's participation and monetary

support for ease of doing business.

• Both parties maintain a high level of trust to ensure healthy gross turn over-sharing.

While unlocking the potential of a property is not something new, many choose not to get their hands dirty. Only a handful are willing to delve into distressed assets to repurpose them for immediate tenancy through joint participation.

Businesses a lifeline

It is no longer just a hypothetical theory but a reality in today's fast-moving world where extraordinary approaches become the new normal. Nobody likes to address the elephant in the room.

The matter of fact is we need to tackle livelihood issues immediately by acknowledging bottlenecks and revamping approaches to bring about a much-needed change to real estate survival, together with the growth of businesses, no matter how small the growth may be.

If a business closes down, the premises it occupied becomes untenanted and the onus lies on the landlord to search for another tenant closest to the usage where the premise is designed and furnished for.

Any downtime would bring more burden to the landlord. A wise property owner should have his real estate negotiators (REN) ready for such eventuality. A wiser REN would target upcoming tenants from a need-based point of view. The question is who can sustain the now-vacant unit in a time of uncertainty when businesses are hard hit the most?

The National Property Information Centre's (Naptic) Q3, 2020 figures showed a staggering number of overhang units, particularly for residential properties amounting to RM42.49bil.

A second chance

We have seen how the Covid19 pandemic has brought most global economies to its knees. At the same time, we are also seeing a light at the end of the tunnel, with the advent of the much-awaited vaccines.

While real estate may not be the main thing on people's minds during a crisis like the Covid-19 pandemic but on their bread-and-butter, the key to rebuilding lives and the economy is tightly connected to the performance and revival of the once robust brick-and-mortar market.

The DNA of property investment has always remained as a visionary one where one should be taking a position long before the market or economy recovers. Asset turnaround is one of the keys to ensure sustainability for the real estate market in Malaysia and the world.

The adage that there's always a solution to every problem holds true. The underlying but unconventional truth is because we, as humans, tend to be solution-centric and getting out of a rut like what we are facing now is merely an eventuality. 📌

The question is who can sustain the now-vacant unit in a time of uncertainty when businesses are hard hit the most?



SuperiorWealth Resources Sdn Bhd founder and CEO Dr Alan Poon is an award-winning international speaker, entrepreneur and author of the three Good Tenant, Great Tenant books series on tenant management.

Contemplating subterranean development

A case study of underground nation building and other related legal matters

By VIKTOR CHONG
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LAND scarcity has always been an inhibiting factor in metropolises across the world, and Malaysia is no different. As population booms in cities, the increasing demand in housing takes a further toll on land as a finite resource.

Creative new ways are required to maximise land usage, and now with the advancement in construction technology, the subterranean zone is an equally viable area for development. Land ownership is no longer confined to two dimensions, but three, namely width, height and now depth.

Building below ground is no longer a novel technique as can be seen in countries like China, Japan and Finland, who are leading the best practices. Singapore's expansion through land reclamation has also seen a shift towards underground land for more space.

For now, subterranean developments, also known as stratum developments, are mostly reserved for public infrastructures. This is advantageous as it frees up the surface for other projects while improving connectivity.

The sheltered environment below provides further comfort as users are not exposed to sun, rain or fluctuating temperatures. Commercial and hospitality elements make up a lesser degree of subterranean projects, and even rarer are residential buildings.

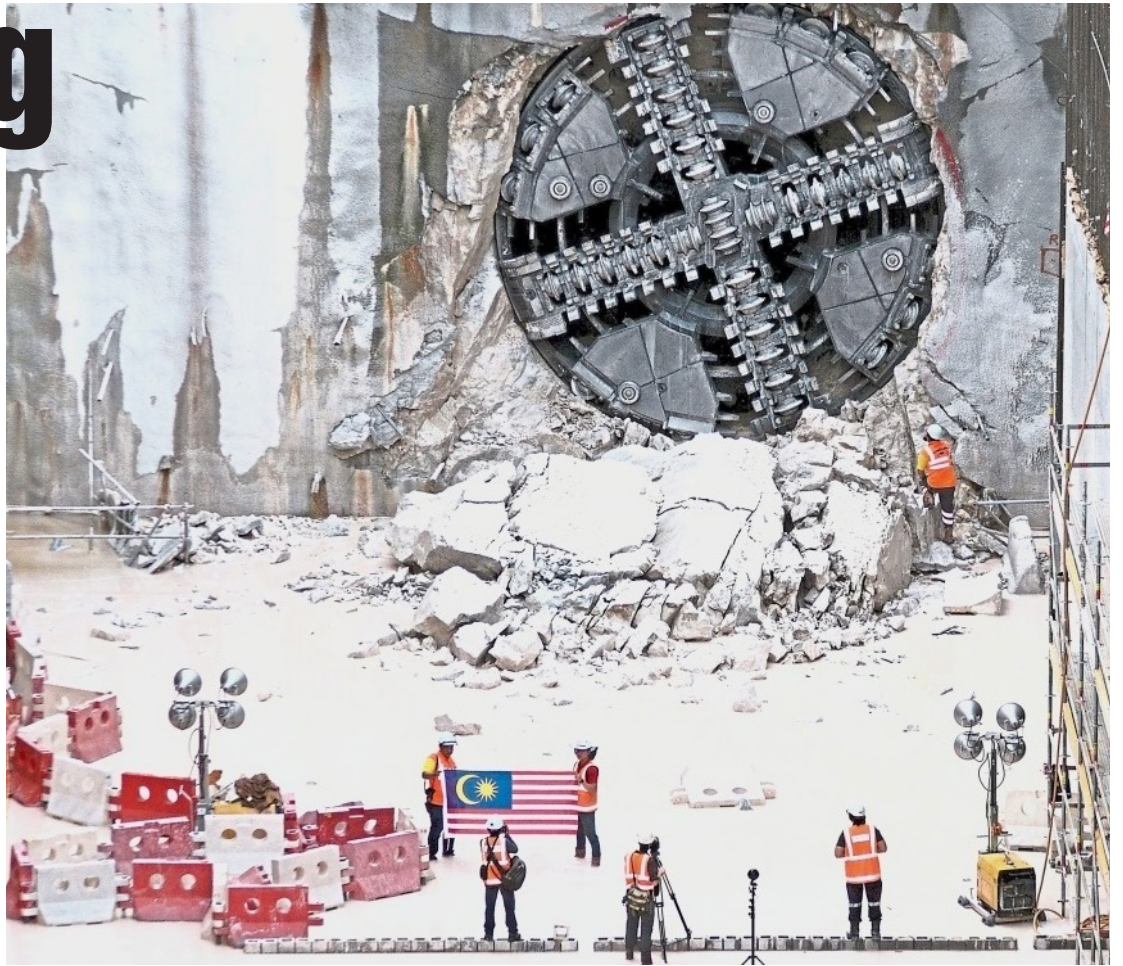
Where stratum is considered, the utilisation of space is very much determined by the degree of depth. For reference purposes, Beijing's guideline suggested a depth of 10m or lower as ideal for the construction of pedestrian walkways, commercial lots, parking lots, municipal pipelines, utility tunnels, subway lines and transport hubs. Increasing depth reduces the feasibility of human activities, and spaces at a depth of 30m to 50m onwards are largely reserved for urban infrastructure, storage or underground automobile roads.

Legal matters

Malaysia as a whole still possesses a wealth of undeveloped land and this alleviates the pressure for us to venture underground like other nations. However, major cities like Kuala Lumpur are already experiencing land scarcity, and the way forward for stratum development or transactions can be made easier if legal ambiguities are minimised.

Towards the future, the land above and below needs to be planned together. The shallow subterranean zone is very much integrated to the surface above it, while the deep underground is usually segregated due to lack of access. Complications may develop if one is to build a stratum project after the completion of the surface project.

Poorly planned strata projects can be easily demolished, but not so for stratum projects as this may



File photo shows the emergence of the tunnel-boring machine, marking the completion of underground work on the first tunnel for the MRT Sungai Buloh-Serdang-Putrajaya Line.

jeopardise the safety of surface-dwelling residents. Legal ownership of the stratum is another sticky matter.

Take for example a situation where an owner wishes to maintain ownership of the surface land while transferring ownership of the land below to a buyer. Kuala Lumpur district valuer Khalid Abdul Mutalib said the buyer cannot establish his ownership on the purchased subterranean land as stratum titles do not exist in Malaysia. In short, an individual can only own the bottom if they also own the top.

Ownership according to depth

Guidelines established by federal authorities state the various types of land and the depth to which owners may claim ownership. Under Jabatan Ketua Pengarah Tanah dan Galian (JKPTG) Circulation No1/2008, the depth of ownership shall not be less than six metres in the case of agricultural land, and in the case of building and industrial category, not less than 10m and 15m. Note that these guidelines apply only to new land from the state and not for existing alienated land. Also, the state authorities can choose to either follow or not to follow the guidelines provided by federal authorities.

Under Section 92B of the national land code, the state authority may specify the depth up to which the underground land directly below the alienated land may be used, and different depths may be specified in respect of different parts of such underground land.

On a less ambiguous note, the government by default holds ownership over the natural resources of the land below, even if the surface land is privately owned. Natural

resources in this context may constitute the sand, rock, precious metal, oil, gas and other resources not mentioned.

Another subject that requires mention is acquisition. The government can acquire the stratum under a private owned land through Land Acquisition Act Section 3 (1). A scenario may involve the initiation of an underground mass rapid transit (MRT) project going under the land of an owner.

Before commencement of said project, the owner is called for inquiry at the land office where the intention is being stated. During this stage, the depth of the underground project is communicated and discussions are made regarding the owner's ability to exercise the use of his land. Once all matters have been agreed upon, then a reasonable sum of compensation is issued to the owner.

In Japan, landowners do not need to be paid a compensation if the public project being implemented is 40m underground. At such depth, the rights of the government or developer is prioritised over the resident.

Finnish law is somewhat similar to Malaysia, where the owner of the property has control over the underground part, though the vertical extent of ownership is not specifically defined in the legislation. Ownership over the lower boundary has been limited to the depth where it can be technically utilised.

In practise, this means the depth of six metres from the lowest point of the building lot, which allows the owner to construct an underground cellar, for example. Anyone constructing facilities underground must obtain agreement on the right to use the underground construction site. Ownership can be established through voluntary transactions, agreements or compulsory purchases based on legislation. ↗

Comparison of underground land utilisation by nations:

China	Finland	Japan
The state authority has set up the level of underground land based on the layer of depth:	The layer of underground land utilisation:	Deep public underground:
a) 0m to 10m (Excellent for access)	a) 0m to 40m (Focused on human activities)	a) 0m to 40m (The surface landowner has the right to fully enjoy and utilise their underground land)
b) 10m to 30m (Good to access)	b) 50m to 300m (Focused on non-human activities)	b) 40m to 80m (Development of underground land)
c) 30m to 50m and 50m to 100m (Hard to access)		

Source: Universiti Teknologi Malaysia



Khalid said that for existing alienated land, the owner owns the ground below, but up to a reasonable depth, a term open for interpretation.