



AQoL2022Putrajaya

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06th ABRA International Conference on Quality of Life
Double Tree by Hilton Putrajaya Lakeside, Putrajaya, Malaysia, 21-22 Nov 2022

A Case Study of Strata Lease Schemes In Malaysia: Features and Uniqueness

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Abstract

This paper aims to show Malaysia's types of strata lease schemes. The differences in Malaysian strata schemes are classified using case study methodology into several types with significant dissimilarity. The objective is to outline the contrast between the strata scheme, the private lease scheme, the Khoo Kongsi strata lease scheme, the Wakaf strata scheme and the Medini lease schemes guided by the National Land Code (NLC), the Strata Title Act 1985 (STA) and the Strata Management Act 2013 (SMA) legislations.

Keywords: Strata Lease Scheme; Private Lease Scheme; Strata Law; Strata Development

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DOI: <https://doi.org/10.21834/ebpj.v7i22.4138>

1.0 Introduction

A strata scheme is described as the development of stratified buildings comprised of unit parcels with individual strata titles. A strata scheme is a complete composition of stratified buildings, including common areas, individual parcels, and accessory parcels, and has a strata title for each parcel (Kamaruzzaman et al., 2010; Antoniades, 2010; Dredge & Coiacetto, 2011; Faizal, 2014; Izanda et al., 2020; JKPTG; 2021). According to Dredge & Coiacetto (2011) development of strata scheme is favoured because strata titles provide security of tenure and ownership. Internationally, strata schemes are called community title schemes, condominium schemes, and owner's corporation schemes (Faizal, 2014). Most scholars agree with the standard features of a strata scheme. The problem arises from the assumption that a different type of strata scheme exists. It is unnatural to typical scholars' understanding of the strata scheme. Hence, this study will explore the possibility of more than one type of strata scheme in Malaysia.

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2.0 Literature Reviews

2.1 The Conventional Strata Scheme

A property development intended to divide buildings or land into several parcels with individual strata titles is a conventional feature of a strata scheme (Kamaruzzaman et al., 2010; Izanda et al.,2022). While Faizal (2014) extended the strata scheme's features into two descriptions; the parcel itself is meant for owner-exclusive use, and the common property is intended for use by all parcel owners. Choong et al. (2015) and Izanda et al. (2020) explain the statutory rights of strata scheme owner, including the right of proprietorship to strata parcel, the right to use common property, the right to manage the scheme, the right to make rules, right to settle disputes and right of termination of strata title. Development begins with presenting planning and building plans for Local Authority approval (Marzhuki et al., 2019). It is followed by an application for a Certificate of Share Unit Formula (SiFUS) from the PTG (Md Zan et al., 2018). Next, the developer needs to submit the proposed strata plan for approval by JUPEM to issue a Certificate of Proposed Strata Plan (CPSP) and submit the application for building or land subdivision to the PTG (Izanda et al., 2021) for strata title issuance. In a conventional strata scheme, the transfer of ownership from the developer to the buyers is registered on strata title.

2.2 Moving Towards the Non-Conventional Strata Scheme

Zainal et al. study in 2022 classified strata schemes into two kinds, the strata scheme and the strata lease scheme. According to Zainal et al. (2022), section 5 in the STA allows this Act to be read and construed with the NLC; hence this implies the process of lease registration shall also be applied to strata title. Creating a lease on a strata title is the significant intention in creating a strata lease scheme. This intention also involves selling a strata unit to the buyer through a sales and purchase agreement, and a lease agreement is created between landowner and buyer. Regardless of how a lease agreement is made, a lease will only be valid or forced when registered. Among scholars, there are differences in naming a lease scheme. Zainal et al. (2022) defined it as strata lease scheme, Zamri (2019) and Abu Bakar et al. (2021) called it a private lease scheme, while Mohsin et al. (2020) and Zainuddin et al. (2022) describe it as a strata private lease scheme. Different names but has the same requirement for registration; to ensure the dealing between the lessee and the lessor is secured. There are different views on how the strata lease scheme came into existence. Zainal et al. (2022) mentioned that a strata lease scheme is only created when a lease is registered onto all strata titles in a strata scheme. Zainuddin et al. (2022) describe a strata private lease scheme as a strata building that uses a private leasing mechanism in land dealing by Malaysian real estate industry players. Abu Bakar et al. (2021) explain that the private lease scheme was proposed in the state of Johor to lease freehold land to buyers for the price paid by buyers. While Mohsin et al. (2020) tells the strata private lease scheme mechanism in the state of Johor is a registration mechanism implemented on the stratified building.

2.3 Classifying a Strata Scheme Development

The local authority can classify any land development while considering government policies, guidelines, and other technical requirements for planning approval (Abdullah et al., 2011). The One Stop Centre (OSC) committees will review and approve the application for a strata scheme development (Marzhuki et al., 2019). The strata scheme development has always been tied down to land use type, such as residential, commercial and industrial, following the express land condition in NLC. The strata scheme development is based on planning intentions for residential, commercial, industrial or mixed-use (Antoniades, 2010; Blomley, 2017). However, there is always the possibility to elaborate and specify the type of strata scheme developed. According to Blomley (2017), a connection between planning, regulation and land zoning will affect the type of property constructed that is intended to be. Research gap is identified through studies by Abu Bakar et al.(2021), Mohsin et al.(2020), Zamri (2019), Zainal et al. (2022), and Zainuddin et al. (2022), implying that there is a type of strata lease scheme, a different type than the conventional strata scheme. Adding to Bromley's study, this implies a possibility for strata schemes to be classified into specific types according to their development intention.

3.0 Methodology

The study is qualitative research using a case study methodology to collect evidence. The case study subjects are Khoo Kongsi's lease schemes in Penang, a Wakaf strata scheme in Penang, Medini strata private lease schemes in Johor, some strata schemes in Penang and the private lease scheme. Non-structured interviews were conducted with respondents, as shown in Table 1. Justification for the methodology used is to allow these respondents to explain the strata schemes based on their experience. In analysis, themes are discussed according to the development intentions and processes, physical appearances, title registration, proprietorship position, and building management members.

Table 1. Description of respondents

Respondents	Designation	Company
R1	Land registrars	Department of Land & Mines, Penang (PTG Penang)
R2	Representatives to (land proprietor)	Trustees of Leong San Tong Khoo Kongsi (Penang) Registered
R3	Representatives to (land proprietor)	Penang Islamic Religious Council (MAIPP)
R4	Land registrars	Department of Land & Mines, Johor (PTG Johor)
R5	Representatives to (land proprietor)	Iskandar Investment Berhad (IIB)
R6	Representatives on law & policy	Department of Director General of Land & Mines (JKPTG)

4.0 Findings

Labelling the schemes into subsections 4.1, 4.2, 4.3, 4.4 and 4.5 were made by respondents based on their experience dealing with these schemes. The intention was to categorize the case according to the scheme's name.

4.1 Strata Scheme

As of the year 2021, there are 1,749,152 strata titles registered in Malaysia (JKPTG, 2022). The number of Malaysian strata schemes developed in the year 2021 was 21,254 schemes (JKPTG, 2022). According to R6, a strata scheme is a complete composition of stratified buildings, including common areas, individual parcels, and accessory parcels, and has a strata title for each parcel. A strata scheme must be erected on one lot of land held under the final title, as required by sections 6(1) and 10(1)(i) of STA. R1 tells that in a strata scheme, buyers are registered as proprietors on strata title using Form 14A of the NLC. Registered proprietors can form the Management Corporation (MC) as stipulated in SMA. In the Housing Development (Control and Licensing) Act 1969 or HDA, Schedule H requires the developer to transfer the ownership to purchasers upon the issuance of strata title. Fig. 1 illustrates the mechanism of dealing between the developer and the buyer.

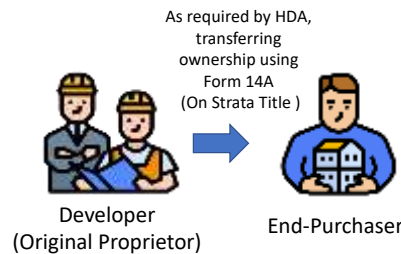


Fig. 1. A Strata Scheme Mechanism for Dealing

4.2 Khoo Kongsi's Strata Lease Scheme

R1 explains that Khoo Kongsi schemes were the first strata lease schemes. The registration of leases onto strata titles began in the early 1990s. Khoo Kongsi schemes are not identified at first as strata lease schemes because, physically, they look the same as strata schemes. The strata title shows that the original landowner is registered as a proprietor, and strata buyers are registered as lessees or trustees in the strata lease scheme. In a strata scheme, there will be multi-owners and each strata unit has its proprietor. However, the Khoo Kongsi strata lease scheme is a single proprietorship scheme with all strata titles registered to one landowner. A typical mechanism of dealing with the Khoo Kongsi schemes is shown in Fig.2. R2 tells that the development of the Khoo Kongsi schemes was to cater to Penang locals' need for housing; later, it extended into developing an integrated township of Bandar Baru Ayer Itam. As of 2021, there are 10,981 strata titles registered in PTG Penang, comprising 24 residential and commercial lease schemes. The decision to make the strata building into a lease scheme was due to land transfer restrictions. The land of the Khoo Kongsi scheme belongs to an extensive lineage of the Hokkien Chinese community living in Penang since the mid 19th Century. Therefore, long-term property leasing was the most feasible option to preserve the proprietorship of the land without hindering the township development.

4.3 Wakaf Strata Scheme

According to R3, Wakaf lands in Penang attempted strata scheme development to improve the land's economic value and increase its investment return. The uniqueness of the Wakaf strata scheme is that it forbids transferring to anyone. Leasing was a practical solution for Wakaf land to have a strata development with a parcel lease for a 99-year term. The strata parcels are sold to buyers through a lease agreement where buyers have the exclusive right of possession within the lease term. Fig.2 illustrate the Wakaf scheme mechanism of dealing under the NLC law. As of 2021, there are 248 strata titles in the Wakaf scheme, comprising four schemes. However, not all Wakaf scheme parcels are sold to buyers. Only Pangsapuri Wakaf Mohamed Hashim units are sold through the lease agreement. The other 3 Wakaf schemes were rented out for a shorter contract period.

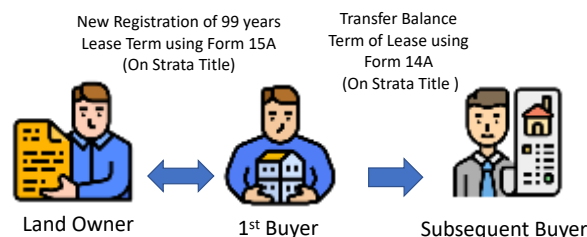


Fig. 2. Khoo Kongsi and Wakaf Schemes Mechanism of Dealing

4.4 Medini Lease Scheme

According to R4, in 2021, there are 8,385 strata titles in PTG Johor records, with 26 schemes total. Malaysian laws govern the current Medini lease scheme in Johor without any law amendment. Medini lease schemes are frequently mistaken as the private lease scheme

(PLS). R4 explains that lease registration in Medini's lease scheme is according to the requirement of the NLC. Zainal et al. (2022) study validates the R4 remark, where the PLS concept is not implemented in Medini development.

R5 explains that Medini schemes have two layers of leasing, unlike the Wakaf and Khoo Kongsi schemes in Penang, which only have a single layer of leasing. The lessor, who is the original land proprietor, enters into a lease Purchase Agreement with the first lessee who will develop the land. Upon completion of the development, the lessee (developer) will sell down the lease of each parcel to an individual end purchaser (subsequent lessee). The lease registration process for land and strata title will be done once using instrument Form 15A NLC.

According to R4, the endorsement of the lease is first registered on the land title. Then later, the land registrar transfers the same endorsement to strata titles. For subsequent sales of strata parcels, the previous lessee will transfer the balance of the leasing term to the next buyers. The mechanism of dealing with the Medini lease scheme is illustrated in Fig.3. Medini schemes were intended as a lease scheme due to the initiative to encourage foreign direct investment in the Medini property market. The targeted buyers were foreign investors and expatriates, with no ownership transfer to these buyers.

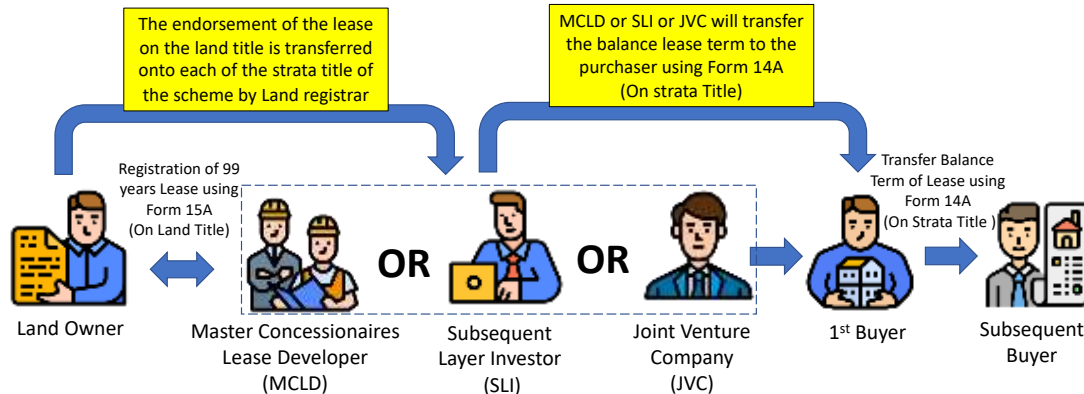


Fig. 3. Medini Lease Scheme Mechanism of Dealing

4.5 The Concept of a Private Lease Scheme

Based on R6 inputs, the private lease scheme (PLS) was a concept to introduce a new alternative to lease ownership in a strata scheme. Instead of transferring ownership, PLS requires the registered proprietor to lease the land to developers and allow the developers to resell the leases to end-purchasers. Once the lease term expires, the land will revert to the original proprietor. In PLS, new documentation is introduced; the Lease Annexure (LA) and the Certificate of Lease (COL). The proprietor has the right to impose his terms and conditions on the lessee through a LA; however, the parties may choose to use the standard terms or draught their own. LA will be binding and applicable to all lessees and subsequent lessees. Through COL, certain rights of the proprietor are given to the lessee during the PLS term, including the right of use, transfer, charge and create an easement. Upon registration, the Registrar will endorse the existence of the PLS on the land and strata title. The lessee will be given COL as evidence of possession of the purchased PLS unit for a term of leasing. Under the PLS scheme, lessees allow being part of the MC committees.

According to R6, if the concept of PLS were to be implemented, it would require a vast law amendment. In meeting LA and COL, heavy adjustments must be made to the NLC and STA. The idea of amending the current law was not a popular choice at the point time when the PLS idea was first introduced. The reason was that it would involve not only STA and NLC amendments but other laws that are not within the jurisdiction of JKPTG. R6 views like Abu Bakar et al. (2021) proposing a law amendment if PLS were to be implemented. Abu Bakar et al. (2021) suggest amending the SMA to allow the lessee to form an MC, amending HDA to incorporate a new Schedule for selling and buying PLS and introducing COL in the NLC and STA. In closing, R6 affirmed that the concept of PLS was only an idea reviewed by the Government but not a policy to be implemented in Malaysian strata scheme development.

5.0 Discussion

5.1 The Individually Intention of Strata Scheme Development

This study found that the Medini scheme, Wakaf scheme, Khoo Kongsi scheme, and private lease scheme fall under the type of strata lease schemes. The existence of different strata schemes was intended due to the need for its development. To summarize, the Wakaf schemes were intended for the strata title to be leased to the buyer, as Wakaf's law does not permit the transfer of land ownership. Medini scheme development is meant to attract foreign direct investment through real estate without extending the land proprietorship to foreign buyers. The Khoo Kongsi scheme was developed to cater to the locals' need for housing and township. Although these lease schemes appear the same as a regular scheme, the land proprietors, the land registrars, and the policy and lawmakers intentionally categorize them to tell them apart from other strata schemes. The implication beyond the confines of this research is that the strata lease scheme classification does not influence the buyers. However, the development of the strata lease scheme has more impact on the land proprietors, the land registrars, and the policymaker who deals directly with the processes.

5.2 Physical Appearances

All types of schemes have similar physical features of parcels (e.g. strata units), accessory parcels (e.g. parking, balcony), and common property (e.g. gym, swimming pool, shared area). Fig.4 shows the common features seen in a strata scheme.

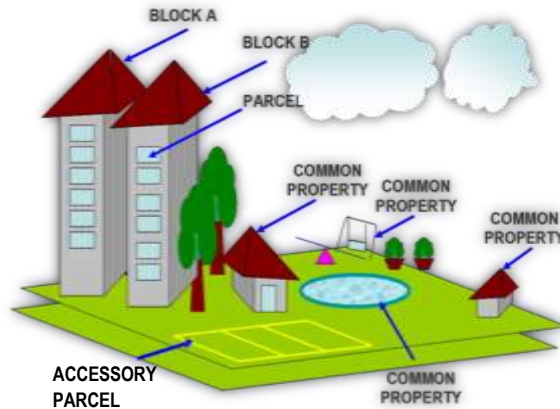


Fig. 4. The Features of the Strata Scheme
(Source: JKPTG)

5.3 Development Processes

The development processes in building a strata scheme and a strata lease scheme are the same. The processes include the planning, building, and post-construction stages. Fig.5 shows the typical processes of both strata and lease schemes.

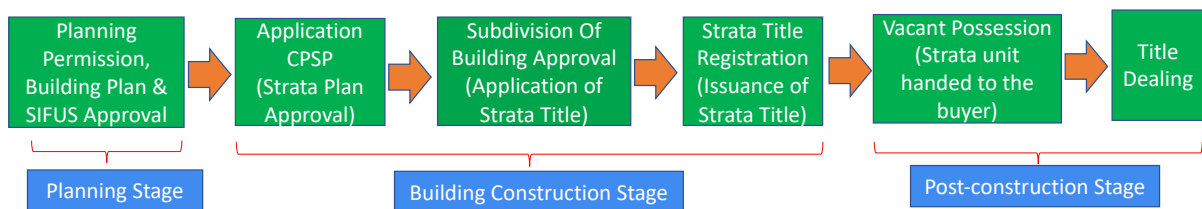


Fig. 5. The Development Process of Strata Scheme and Strata Lease Scheme

5.4 Title Registration

Buyers are registered as proprietors on strata titles in a strata scheme, while buyers are registered as lessees for strata lease scheme (Zainal et al., 2022). Section 221(4) & Section 218(1) NLC require the buyer and land proprietor to sign a lease agreement documenting the purchase of a strata unit with a 99-year lease term. This lease will be effective when the registration of the lease instrument Form 15A NLC takes place. The buyer may transfer the balance lease term to the next buyer using an instrument of transfer Form 14A NLC.

5.4 Proprietorship Status

Zainal et al. (2022) explains in a strata scheme, a proprietor has an ownership right to the land, but in a strata lease scheme a proprietor is a lessor to a registered lease. A lessee only has the right of possession due to the lease interest within a lease term. A possession is barely owned under NLC. However, Section 340(1) NLC tells a registered lease is an indefeasible registration that any party cannot contest unless the registration is fraudulent or the registration instrument is invalid. A lease instrument between the lessor and lessee must be registered to protect the interests of both parties. Although a registered lease does not constitute ownership, the lessee has full rights to the strata unit during the lease term. The original land proprietor will be the sole owner of all strata titles in the lease scheme.

5.5 Building Management Committee

The SMA allow buyers to form a Joint Body Management (JMB). In a strata scheme, once the individual strata title is issued and transferred to the buyers, the strata proprietor is required to form the MC. However, in the strata lease scheme, a JMB may only form among strata unit buyers, but there is only one owner for all strata parcels. That single owner becomes the MC following Article 2(3) of the Second Schedule, SMA

6.0 Conclusions & Recommendations

The study findings and discussions are tabulated in Table 2, showing that strata schemes can be differentiated and classified into types. Classifying a strata scheme by land proprietors, land registrars, and policymakers was to differentiate the scheme's uniqueness. Retrospection of the study highlighting the differences in strata schemes before and after the study is shown in Fig.6 and Fig.7. Malaysian

strata schemes have identical physical looks and development processes. Still, the schemes differ according to their development intention. The PLS was an ideal concept of leasing for strata buildings but required law amendments. NLC, STA and SMA regulate the Khoo Kongsi, Wakaf and Medini lease schemes, each with a different set of in-house rules governing the scheme. Consequently, limiting strata lease schemes according to their uniqueness will eventually generate specific process and legal restrictions to new lease scheme development. This new knowledge shall be the recommendations for a more diversified strata scheme development.

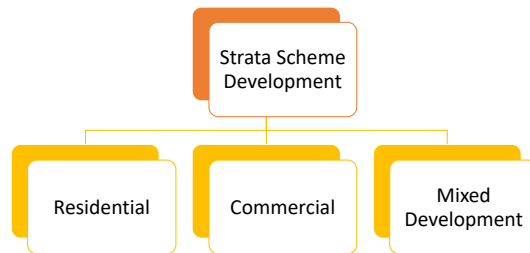


Fig. 6: Type of Strata Scheme (Before Study)

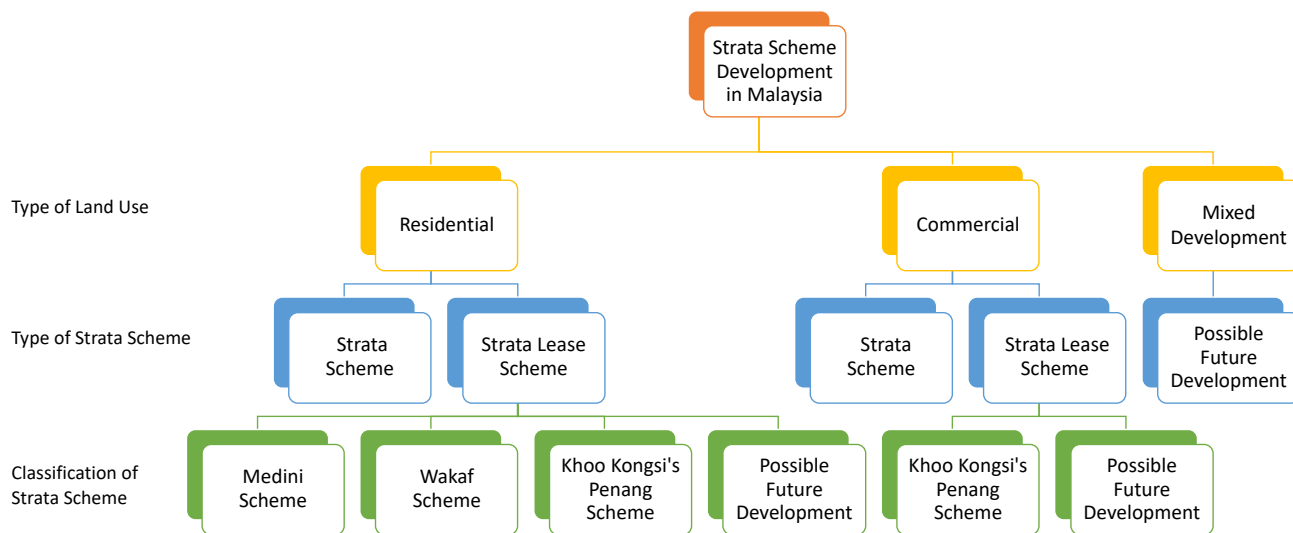


Fig. 7: Type of Strata Scheme (After Study)

Table 2. The Type of Strata Scheme and Its Differences

Type of Strata Scheme	Strata Scheme	Strata Lease Scheme			Private Lease Scheme
		Khoo Kongsi Lease Scheme (Penang)	Wakaf Strata Scheme (Penang)	Medini Lease Scheme (Johor)	
Govern Law	Highly dependent on the legislative requirement in the NLC, SMA & STA				Requires amendment of Act or a new set of legislations specifically to cater to the need for PLS concept
Buyer Status in Title Registration	Registered as proprietor		Registered as Lessee		PLS introduce the certificate of the lease to secure the buyer's strata parcel ownership and commence any dealing relating to the parcel
Significant Document	Strata Title		Instrument of Lease, Form 15A NLC		Certificate of Lease
Managing Committee (Before issuance of strata title)			Strata unit buyers can form the JMB		
Managing Committee (After the issuance of strata title)	Registered proprietor able to form MC		Registered lessee not able to form the MC		Lessee able to form the Management Corporation
Type of Ownership	Multi owners		Single ownership		Not specified

Term of Possession	Perpetuity	99 years lease	Ninety-nine years lease + Auto-renewal of 30 years lease.
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Acknowledgements

This study does not receive any funding from any agency.

Paper Contribution to Related Field of Study

This new knowledge on various types of strata lease schemes provides possibilities for more comprehensive research relating to strata-building development.

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