

Comparative Studies of Real Estate Agency Practices and the Way Forward

Zarita Ahmad@Baharum¹, Ting Kien Hwa², Sharuzaman Mohd Salleh³, Sharon Yam⁴

¹Pusat Pengajian Harta Tanah dan Ukur Bangunan, Kolej Alam Bina, Universiti Teknologi MARA, Shah Alam, Selangor, Malaysia,

² Faculty of Built Environment, Tunku Abdul Rahman University of Management & Technology, Kuala Lumpur, Malaysia

³TransAsia Property Consultancy Sdn Bhd, Shah Alam, Selangor, Malaysia

⁴Department of Economics, Finance & Property, School of Business, Western Sydney University, Australia

Email of All Authors: zarit928@uitm.edu.my, tingkh@tarc.edu.my, sharuz1961@gmail.com, s.yam@westernsydney.edu.au
Tel: 60355444216

Abstract

Real estate agency practice means acting as an agent for a commission on the sale or acquisition of properties. This profession has been regulated in Malaysia since 1981. It has grown and changed over the years, bringing with it a host of problems and difficulties; hence the way people interact and do business, the fierce competition and technological advancement present additional obstacles. This essay compares the agency practices in Malaysia with Singapore, Indonesia, Australia, and Hong Kong. A desktop study was used. The findings reveal commonalities in the ways that regulatory organisations, registration, and sanctions are implemented.

Keywords: Real Estate; Agency Practices; comparative study

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1.0 Introduction

Real estate agency practices involve representing oneself to the public for a commission or fee as an agent in the sale, purchase, leasing, or letting of land and buildings. This is regulated by the Board of Valuers, Appraisers, Estate Agents, and Property Managers Act 1981, which was amended in 1984 to address unprofessional practices. In 2018, further amendments were made to include the registration of property managers under the same Act.

2.0 Literature Review

Real estate agents perform the crucial function of serving as a link between the consumer and business. They have a responsibility to inform the clients/consumers about the conditions in the market; and offer homebuyers knowledge, expertise, and direction. It has been established that as a professional, i.e., a person who derives their income from their specific knowledge and experiences, a set of best practices must be followed.

2.1 Profile of Estate Agency Practice in Malaysia

Before 1981, estate agency practice was not under government control, and the practice was conducted by those from different backgrounds without proper qualifications. To look after the profession, estate agents formed the Malaysian Association of Real Estate Agents (MAREA) in 1974; it was later changed to the Malaysian Institute of Estate Agents (MIEA) in 1989, transforming from a trade association to a professional body to provide some form of regulation to the practicing members. As asserted by Abayomi Ibiyemi et al.

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(2014), to safeguard public interests against the unscrupulous practice of estate agencies by unqualified parties and rogues in the 1970s and early 1980s, the Malaysian Parliament enacted the legislation known as the Valuers, Appraisers, and Estate Agents Act 1981 (Act 242).

The present structure of estate agent practice under the Act is twofold: valuers may take up estate agency practice alongside valuation and property management. Those who become estate agents will take up estate agency practice as their sole profession. In Malaysia, estate agent refers to the registered agent, denoting that a person's name is entered into the Register of Estate Agents of the BoVEAP. Tables 1 and 2 illustrate the number of firms registered with BoVEAP and the active members.

Table 1: Number of firms registered with BoVEAP (active)

Type	Number
Valuer & Estate Agent (VE)	198
Valuers (V)	540
Estate Agent (E)	915
Estate Agent & Property Management (EPM)	247
Property Management (PM)	573

(Source: Author's illustration, 2023)

Table 2: Number of registered members BoVEAP (active)

Type	Number
Registered Valuers (V)	2874
Probationary Valuers	1567
Estate Agent (E)	4142
Probationary Estate Agents	2357
Registered RENS	25,000

(Source: Author's illustration, 2023)

2.2 The law and subsidiary legislations

Act 242 took effect on September 7, 1984. The real estate profession comes under the purview of the Ministry of Finance; regulated by the Board of Valuers, Appraisers & Estate Agents, Malaysia and governed by the Valuers, Appraisers, Estate Agents and Property Managers Act of 1981, as amended; the Rules of 1986 and the Standards of 1999.

The Rules detailed the respective sections of the Act. The Standards provide the best practice on Valuation, Estate Agency, and Property Management. The Circulars provide the directives and guidance from the Board.

2.3 Regulatory Body

The Act is administered under the Ministry of Finance, and the Board of Valuers, Appraisers, and Estate Agents is enacted under the Act as a regulatory body. The President of the Board is nominated by a person who holds the position of the Director General (DG) of the Valuation and Property Services Department in the Ministry of Finance. The President himself is a registered valuer, and his primary function is to advise the government on standards of practice for valuation, property management, and estate agency. The Minister of Finance appoints the members of the Board with the composition of the members include six (6) registered valuers from the public service, four (4) registered valuers nominated by the Royal Institution of Surveyors Malaysia (RISM), three (3) registered Estate Agents, three (3) other registered valuers and three property managers nominated by the President of the Board. The primary function of the Board is to administer the Act, Rules, and other subsidiary legislation of valuation, property management, and estate agent practice.

2.4 Qualification of Estate Agent

Under the present law, a person is eligible to become an estate agent among others, is not less than 21 years old and obtained a qualification recognized by BoVEAP. He is also not subject to bankruptcy or any offence. BoVEAP has emphasized the basic academic qualification of those aspiring to become estate agents and this is dealt with under Rules 33A – 42 of the Valuers, Appraisers and Estate Agents Rules 1986.

Two pathways to becoming estate agents. Firstly, a person is eligible if he possesses a recognized diploma or degree from an institution of higher learning or any recognized professional institution. Alternatively, one may sit for the Part I and Part II Estate Agents Examination set by BoVEAP. Successful candidates in the Board examinations are conferred with a Diploma. After that, those with accepted academic qualifications must complete post-qualification practical experience of one or two years, depending on which qualification the person has acquired. Upon completion of practical experience and acceptance by the Board, one may sit for the Test of Professional Competence (TPC), which consists of practical and oral examinations. It is a pre-requisite that a person must apply to become a probationary estate agent registered under the Board before the person can be allowed to sit for the TPC.

2.5 Qualification of Real Estate Negotiators

Real estate negotiators are taking significant roles in Malaysia's present structure of estate agency practice. According to the Malaysian Estate Agency Standards (MEAS), a negotiator is a person who is employed or engaged by an estate agent to assist him/her in the estate agency practice. A Negotiator shall include Real Estate Negotiators (RENS) and Probationers, who shall always be under a registered estate agent's immediate direction and supervision. RENS are not subjected to any academic or professional qualifications except for the probationary estate agent. Anyone interested in becoming a REN must attend a 2-day Negotiator Certification Course

(NCC) by a firm or institution recognized by the Board. With the certification, the individual can apply to the Board to obtain a REN registration number and a tag before being employed as a real estate negotiator.

Negotiators are people a registered estate agent employs in the estate agency practice (s22c(2A), Act 242). The Board gives each Real Estate Negotiator a REN number upon his application being approved. They are usually salespersons who are paid a fee or commission based upon the conclusion of a successful estate agency transaction. Table 3 illustrates the roles of registered estate agents and negotiators.

Table 3: Roles of Real Estate Agents (REAs) and Real Estate Negotiators (RENs)

REAs	RENs
Governed by the Act	Function as assistants to REAs
Manages the agency company	Work according to the Malaysian Estate Agency Standards
Operates a proper agency office	Can be employed/engaged under 'Contract of Service' or 'Contract for Service'
Fiduciary duties to their clients	Must be registered by the agency firm to the Board
Operates Clients account	Provision in the Act (amended 2017)
Trains and manages RENs	
Accountable for any misconduct/ misdemeanors by RENs under REAs employment	

(Source: Author's illustration, 2023)

2.6 Structure of estate agency practice from a business competition perspective

The research was conducted by the Malaysia Competition Commission (MyCC) in 2015 on the market structure, the level of competition and competitive strategies of estate agency companies in Klang Valley. Key points from the final report entitled "Competitive Strategies of Real Estate Agents in Malaysia: A Case Study in Klang Valley" are in the following sections:

2.6.1 Market structure

Many estate agency companies in the Klang Valley are small, and very localized in terms of their market's coverage, but large listings are normally owned by large-sized real estate companies.

2.6.2 Competitive strategies

Major strategy competitive elements i.e., Image and Reputation, Human Resources, Information Technology, competitor orientation, customer orientation, and Business Practice are important.

3.0 Problem Statement

In Malaysia, an estate agent is regulated under the Ministry of Finance through the enacted legislation namely Valuers, Appraisers, Estate Agents and Property Managers Act 1981 and its Rules 1986. The legislation has been implemented for the past 36 years without any major amendments to date. Also, there is no review or research carried out to investigate the relevance of the code of conduct and rules of the Act to the current estate agency environment and practices. The real estate agency industry has evolved and transformed over the years however, the legislation has not changed to accommodate changes arising from cycles of the real estate business and the disruptive technologies affecting the industry.

The modus operandi in other countries, especially developed countries such as Singapore, Australia, South Korea, etc., suggested that.

1. the profession must be regulated to protect the interest of the public,
2. there is a separate legislation that governs the real estate agency practice and
3. the empowerment of the body has been revised to include various stakeholders instead of the public interest.

Therefore, it is essential to evaluate the performance of the real estate agency practices regarding the profession's relevance, reliability, and sustainability.

4.0 Methodology

Comparative studies are conducted to examine the current practice of estate agencies in selected countries namely Singapore, Indonesia, Australia, and Hong Kong. International comparisons are important in the process of benchmarking and to identify the best practices that can be emulated. A desktop analysis and interviews with the relevant authority were adopted.

5.0 Discussion

5.1 Findings and Discussion

Comparative studies of real estate agency practices can provide valuable insights into the different approaches and strategies employed by real estate agencies in various regions or countries. Analyzing these practices helps identify successful models, challenges, and areas for improvement.

A few items/criteria have been investigated in this comparative study to come up with the way forward:

i. Regulatory Authority:

Examine the regulatory frameworks governing real estate agencies in different jurisdictions. Compare licensing requirements, compliance standards and the impact on industry practices. All case studies have a regulatory authority except for Indonesia, where the profession is not regulated yet.

ii. The legislation:

A majority case study has dedicated legislation. Only Indonesia does not have dedicated legislation for real estate and Malaysia has legislation together with valuation and property managers.

iii. Terminology (under the Act):

An estate agent is a person with a license and registered to the relevant authority and this applies to all selected case studies except for Indonesia since they do not have dedicated legislation, so terminology is not applied here. Malaysia uses a registered estate agent as a person who holds a license and a Registered Estate Negotiator or REN as the salesperson.

iv. Coverage under the Act

The coverage of the legislation applies to both the estate agents and the salesperson but not in Malaysia whereby only the Registered estate agents are held liable under the BoVAEP.

v. Penalties

Singapore, Hong Kong, and Australia have a wide coverage of penalties and involve heavy fines. Penalty information is not found in Indonesia. Malaysia's penalties vary but are not heavy.

vi. Qualification

Differ according to the needs and requirements of the industry. For established countries e.g. Singapore, Hong Kong and Australia have a very comprehensive structure on the qualification for both salespersons and estate agents. No data was found for Indonesia. Malaysia has also set out the qualifications needed but only for the registered estate agent and the minimum requirement for REN.

vii. Ethical Standards/code of conduct/ethical:

Investigate ethical guidelines and practices within real estate agencies. Compare how agencies handle conflicts of interest, transparency, and client confidentiality. All have set out the code of conduct requirements for the profession. And this shows that this profession is highly regarded by the industry.

Table 4 summarizes the comparative data between countries.

Table 4: Summary of comparative data between countries

Country	Singapore	Hong Kong	Melbourne, Australia	Indonesia	Malaysia
Ministry	Consumer Affair	Consumer Affair	Consumer Affair	Ministry of Trade	Ministry of Finance
Regulatory Authority	Council for Estate Agent (CEA)	Estate Agent Authority	Estate Agent Council	Badan Nasional Profesi Indonesia (BNPI) Lembaga Sertifikasi Profesi (LPS) Broker Properti	Board of Valuers, Appraisers, Estate Agents, and Property Managers
The Legislation	<i>Estate Agents Act</i> (Revised edition 2011)	Estate Agents Ordinance	Estate Agency Act 1980 (amended 2012)	SIUP (Surat Izin Usaha Perdagangan) – under the Ministry of Trade No specific legislation on real estate agency practice	Valuers, Appraisers, Estate Agents, and Property Managers 1986 (amended)
	<i>Key Executive Officer</i>	NA	NA	NA	NA
Terminology: Under the Act	<ul style="list-style-type: none"> "Estate agents" means estate agency businesses (sole proprietors, partnerships, and companies) "Salespersons" means individuals who perform estate agency work. 	Estate Agent Salesperson	Real estate agent Agent's representative	NA	Registered Real Estate Agents Real estate negotiators

Coverage under the Act	Applied to both	Applied to both	Applied to both	Applied to both	Only Registered Real Estate Agent
Penalties	Wide coverage and heavy	Wide coverage and heavy	Wide coverage and heavy	Data Not found	Varies but not heavy
Qualification	<ul style="list-style-type: none"> • Salesperson syllabus • Estate agent syllabus <p>Registration criteria:</p> <ul style="list-style-type: none"> • at least 21 years of age. • a minimum of 4 GCE 'O' Levels passes or equivalent. • passed an industry examination. • registered with only one licensed real-estate agency at any point in time. • not a licensed moneylender or an employee of a licensed moneylender. • not an existing licensee or Key Executive Officer (KEO) of another real estate agency. • undertake mandatory CPD of at least six hours per year. • covered under Professional Indemnity Insurance valid for at least one year from the commencement date. • Must not have defaulted on Medisave contributions with the Central Provident Fund Board. • Must fulfil fit and not bankrupt; not convicted of fraud, dishonesty, or breach of fiduciary duties in any country; and not served detention or police supervision order • must wear an agent identification card while doing estate agency work. 	<ul style="list-style-type: none"> • Salesperson syllabus • Estate agent syllabus <p>Salesperson's license or estate agent's license (individual) must:</p> <ul style="list-style-type: none"> • age of 18 years. • completed an educational level of Form 5 or equivalent*; • passed the relevant qualifying examination in the 12 months immediately before the application*; • considered a fit and proper person to hold a license. <p>Estate agent's license (company) must:</p> <ul style="list-style-type: none"> • be a company. • at least one director holding a valid estate agent's license. • have a licensed estate agent in effective control of the company's business as an estate agent. • have directors who are all considered fit and proper persons; • be considered a fit and proper person to hold a license. 	<p>For unconditional registration as a Land Agent, satisfactory completion of one of the qualifications listed below.</p> <p>Option One CPP50307 Diploma of Property Services (Agency Management)</p> <p>Option Two Bachelor of Business (Real Estate Practice) offered by the University of South Australia</p> <p>Option Three A law degree conferred by an Australian university, or a law degree conferred by a person authorized to confer a degree.</p> <p>Option Four A law degree conferred by an Australian university.</p> <p>Option Five Diploma of Business (Real Estate Management)</p> <p>Option Six Certificate of Real Estate Agency conferred by the Department for Employment, Training and Further Education.</p> <p>Option Seven Degree of Bachelor of Business (Property) or degree of Bachelor of Business in Property conferred by the University of South Australia,</p> <p>Option Nine Graduate Diploma in Property, or Master of Business (Property) or Master of Business in Property, conferred by the University of South Australia</p> <p>Option Ten Master of Property offered by the University of Adelaide</p>	NA	<p>REN: with SPM (attended 2 days approved seminar)</p> <p>REA: Diploma or Degree in Real Estate (university that is approved and accredited by BOVEAP) Or Sit for BOVEAP examination. (Part 1 & 2)</p>
Coverage Code of Conducts/ Ethics	Knowledge of and compliance with relevant laws, practice circulars and guidelines, and essential facts	Good understanding of related legislation and requirements	know the relevant laws.	Fasal 3: Sharing and exchanging knowledge among members is beneficial to promote the real estate profession to the public	Knowledge of and Compliance with the Law

Due diligence and compliance with law and statutory requirements	Ethical and moral standards during practice and responsibilities Exercising due diligence	exercise skill, care, and diligence in performing their functions.	Fasal 7: to cooperate with agents that have a high level of integrity only	Acting within the Law
General duty to clients and public	Professional knowledge and competence are required.		Fasal 2: acting with integrity and dedication to the client and public	Conduct of Registered Estate Agents in safeguarding the best interests of their clients by acting with Fairness and Integrity.
Prohibition against bringing discredit or disrepute to the real estate industry.	Relationship between agents and ethical standards to be observed in conducting the estate agency business.	disclose to their client any personal or commercial relationship they have with a supplier if they recommend that supplier.	Fasal 5: to appreciate and respect the professionalism among members and other professionals	Transparency and Accuracy of Statements
Duty to clients in relation to the signing of documents		act fairly, honestly, in good faith and to the best of their knowledge and ability always	Fasal 1: uphold the good name of the profession among members, clientele, and the public	Provision of quality services with Courtesy, Fairness, and Integrity
Obligations in respect of agreements	Compliance with the law	follow their client's lawful instructions, except if it would not be good estate agency practice	Fasal 4: to receive fee and remuneration that is due to practitioners	Personal Interests and Relationships to be disclosed.
Obligation in conveying offers and counteroffers				
Interpretation or translation if necessary				
Duties in respect of advertisements			Fasal 6: to avoid securing appointments through inappropriate advertisement, commission, and influence	
Duty to avoid conflict of interests.	Minimizing any conflict-of-interest situations			
Recommending professional advice where appropriate				
Safeguarding confidential information				
				Continuous Professional Development Program

(Source: author's illustration)

In conclusion, Malaysia is at par with other comparative countries such as Singapore, Hong Kong, and Australia where estate agency practices are regulated by the law. Based on the comparative analysis of the laws, there are similarities in practices in terms of the governing bodies, registration of estate agents, and penalties. However, some improvements can be adopted from the comparative study which includes: i) Qualification of the sales representatives/persons; ii) Education and entry requirements; iii) Commissions and remuneration; iv) Enforcement; and v) Control and monitoring.

5.2 The Way Forward:

There is much room for improvement. A few are highlighted here that include:

i. Improving legislation for real estate agents

To date, the estate agency profession does not have dedicated legislation and regulatory board. Valuation, property management and estate agency are separate professional practices. A new regulatory board and structure may provide the impetus to enhance further the estate agency profession. The new legislation may have separate detailed provisions on scope/responsibility and penalties for RENs and registered estate agents.

ii. Standardization and Best Practices

Propose the development of standardized practices and ethical guidelines for the real estate industry. Advocate for the adoption of best practices to enhance professionalism and trust.

iii. Monitoring and enforcement

It is crucial to establish an Enforcement and Disciplinary Unit with adequate manpower and resources. Coordinated and collaborated enforcement actions with other agencies in related ministries such as the Ministry of Local Government Development (KPKT) and Ministry of Domestic Trade & Consumer Affairs (KPDNKK) would improve monitoring and control of estate agency practices.

iv. Continued Education and Public engagement

Emphasize the importance of continuous professional development and ongoing education for real estate professionals. And to include public engagement.

v. Consumer Education

Propose to have initiatives and educational programs to educate consumers about their rights and benefits in engaging RENS/REAs and to understand the real estate transaction process to avoid being taken advantage of by illegal brokers. Support the creation of resources that empower clients to make informed decisions e.g., campaigns, mobile info trucks, talks for senior citizens etc.

vi. Community Engagement

Encourage real estate agencies to actively engage with and contribute to their local communities. Highlight the benefits of responsible corporate citizenship in the real estate agency sector.

6.0 Conclusion & Recommendations

In conclusion, a comprehensive comparative study can serve as a foundation for identifying areas of improvement and proposing strategies for the advancement of real estate agency practices. The way forward involves a combination of industry collaboration, a commitment to ethical standards and ongoing education.

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Paper Contribution to Related Field of Study

Real Estate Agency Practice

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