

**Housing Private Public Partnerships:
Perspective From The Government Agencies.**

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ABSTRACT

A study was conducted to examine housing public private partnerships (PPP) in Malaysia with specific reference to government agencies involved in housing development. These agencies include local authorities, state economic development corporations (SEDCs), regional authorities, Islamic councils, government-linked companies and ministry-owned organisations. The objectives of the research were (1), to determine the extensiveness and intensiveness of housing PPP during the 2000-2006 survey period, (2) to ascertain the objectives of adopting housing PPP, (3) to identify the critical success factors of housing PPP, and (4) to formulate best practices for housing PPP. Data was collected using the mixed method of postal questionnaire and follow-up interviews. In order to produce best practices of housing PPP, the multi-cases study approach was conducted on 10 housing PPP projects. To validate the drafted best practices, a seminar was organised attended by invited officers from the various government agencies. All government agencies should take cognisance of the findings of this study to avoid overly optimistic expectations and costly blunders.

Keywords:, housing, development, public private partnerships,

1. INTRODUCTION

I embarked on this particular research by accident. About five years ago, I was talking to an ex-student of mine who was attached to a state economic development corporation. I had just begun looking into the internationalisation of Malaysian housing developers with the help of NAPREC grant. Somehow the conversation diverted to a partnership which his organisation had forged with a private developer to develop a new township. Until today, I still remember his words vividly when he described the partnership. He said, "They think we are stupid." I sought funding from NAPREC as soon as my previous research drew to a conclusion. The objectives of the research were:

- (1) to determine the extensiveness and intensiveness of housing PPP during the 2000-2006 survey period,
- (2) to ascertain the objectives of adopting housing PPP,
- (3) to identify the success and failure factors of housing PPP, and
- (4) to formulate best practices for housing PPP.

In the main, the perspective obtained was that of government agencies, even though data were also obtained from private developers as partners to housing PPP.

Public-private partnerships (PPP) are often associated with infrastructure development. Examples of renowned infrastructure PPP are the Eurotunnel linking France and UK for the first time since the Ice Age which cost US\$19 billion, the US\$7.7 billion Trans-Alaska Pipeline System Project and the US\$4.5 billion Sincor Heavy Oil Project in Venezuela (Ong and Lenard, 2002). Less publicised, perhaps because they are less spectacular, are the housing PPP which have been adopted in many countries around the world: Egypt, India, Pakistan, South Africa, Bulgaria, Mexico, Russia, Thailand and the U.K. (Payne, 2000). In fact some of you may know that IJM's first housing development project in India was a housing PPP with the Andhra Pradesh Housing Board for the Raintree Park Township (Abdul Rashid et al., 2006). There are different nuances of housing PPP depending on the historical cultures of the relationships and interactions between the state and the private sector in a particular country (Brown et al., 2006). The country's economic, political and cultural circumstances also influence the housing PPP format. Hence, whatever is applicable in another country might not be appropriate in Malaysia.

While the term PPP is not normally associated with housing development, its principles have been put into practice quite a while back, beginning with Kuala Lumpur City Hall in 1983 to deliver low cost housing for squatters (Jamaluddin and Agus, 1997). Under the Fifth Malaysia Plan (1986-1990), the government launched the Special Low-Cost Housing Programme which aimed to deliver 80,000 units a year for three years to boost economic growth by 2% annually. The private sector was expected to undertake the programme while the government provided land and many other incentives.

Significance of study

There has been little study done on housing PPP in Malaysia, Jamaluddin and Agus (1997), Singaravelloo (2001), Ong and Lenard (2002), and Wan Abdul Aziz and Hanif

(2005) Are among the few. In fact, worldwide, housing PPP have been very much under-studied (Ong and Lenard, 2002; Sengupta, 2005). This research therefore attempted to bridge the gap by providing knowledge to housing providers, policy makers and researchers regarding housing PPP in Malaysia. The purpose of this research was given more credence in light of the few documented housing PPP which had gone awry wrong. One housing PPP project in Negeri Sembilan was not completed on time but instead stretched until eight years because the developer concentrated on building the high-end portion of the development first (National Audit Chief, 2003). Another housing PPP project in Selangor did not meet quota sales for targeted buyers as the developer preferred to focus on another buyer segment (National Audit 2000). Yet another eventually brought financial adversity to a public agency because the developer undervalued the granted land for development (National Audit Chief, 2001). All relevant government agencies therefore should take cognisance of the findings of this study to avoid overly optimistic expectations and costly blunders.

Housing PPP versus housing joint ventures

Housing PPP should not be confused with housing joint ventures between public and private entities. Under a joint venture, the public agency takes an active role in the development process, from the planning stage through facilitation of the approval process and removal and relocation of squatters, the construction stage by providing necessary infrastructure and amenities on site and even right up to the marketing stage of disposing the housing units (Wan Abdul Aziz et al., 2005). As found from the present study, the public agency also shoulder the risks associated with the housing development. And it is compelled to commit land by charging it to the bank. Should the joint venture default on loan repayments to the bank, the bank reserves the right to auction the land. Under housing PPP, the entire task of housing development is delegated to the private sector. Regardless of the sales outcome, the private developer is required to give the agreed returns to the public agency. The public agency bears no risk whatsoever. Most importantly, the land can remain secure in the hands of the public agency up until the sales transaction with housebuyers.

2. RESEARCH METHOD

Given that the present research was most likely the first major exercise to examine housing PPP in Malaysia, it was decided that the mixed method be adopted to collect data. Quantitative data collected from postal questionnaire survey were complemented with rich qualitative details obtained from interviews and case studies (Greene, 2008). Past studies on housing PPP (Singaravelloo, 2001; Wan Abdul Aziz and Hanif, 2005; Griffin, 2004; Payne, 2000) favoured the case studies approach, the exception being Susilawati et al. (2005) who also adopted the survey-interview combination.

The questionnaire was drafted based on past literature on housing PPP. For pilot test, five individuals with experience in housing PPP were approached to give their comments about the draft questionnaire - a project executive who later recommended his colleague project manager also from the same housing cooperative, an engineer

attached with an engineering consultancy firm, an ex-project executive of a state-owned enterprise and a project executive of a state-owned enterprise. From their feedback, the questionnaire was refined.

The public agencies identified as potential sample population were the 135 local authorities, 25 state-owned enterprises, 12 regional authorities, 14 state Islamic councils, 7 government-linked companies, 2 ministry-owned organisations. Telephone calls were made to all of them to enquire whether they had ever teamed up with private developers for housing development. Consequently, three state-owned enterprises, five regional authorities and three government-linked companies were removed from the postal list, making the final number 184 out of the original 195. Out of these, only 19 (10.4% response rate) returned the completed questionnaires that were sent to them. This was despite the follow-up calls made four weeks later. Poor response can be attributed to sheer apathy and 'sulit' (confidential) syndrome that normally afflicts government agencies.

11 respondents expressed their willingness to be interviewed in the questionnaires. As pre-interview preparation, desk research was undertaken to compile as much additional information as possible, other than that contained in the questionnaires, about the organisations and their housing PPP projects. Secondary sources included organisation websites and online newspaper articles. All except one interview were tape-recorded. The data from the postal questionnaire and interviews were then analysed. The quantitative data obtained from the postal questionnaire survey was 'qualitised' (Tashakkori and Teddlie, 1998) so that they could be interpreted together with the qualitative data. The data obtained from the interviews, secondary sources and case studies were content analysed. Upon completion of the analysis, 10 out of the 11 interviewed agencies were again approached so that in-depth case studies on specific housing PPP projects (one for every organisation) could be conducted. These were scrutinised more intensely to further grasp the intricacies of housing PPP. The case studies served to generate draft best practices which were then validated by invited officers from the various government agencies in a seminar organised in Kuala Lumpur.

3. FINDINGS

Extensiveness and intensiveness of housing PPP, 2000-2006.

Of the 19 public agencies which participated in the survey, only 14 provided details about the number of housing PPP projects they launched between 2000-2006 inclusively and their gross development value (GDV). The other five only gave the information about the former. In terms of extensiveness therefore, these 14 public agencies launched 41 projects (equivalent to 2.9 projects/organisation) (see Table 1). In terms of intensiveness, their cumulative GDV almost reached RM2 billion (equivalent to RM48.8 million per project).

Table 1: PPP project's gross development value (GDV), 2000-2006

Organisation	Number of projects	Type of development ¹	GDV (million)
1	1	n.t	RM 56
2	5	m.r	RM 25
3	4	m.r	RM 265
4	5	m.r	RM 75
5	1	m.r	RM 11
6	5	n.t	RM 98
7	1	m.r	RM 39
8	3	m.r	RM 85
9	3	m.r	RM 130
10	1	m.r	RM 61
11	4	n.t/m.r	RM 211
12	5	m.r	RM 339
13	2	n.t	RM 550
14	1	m.r	RM 54
Total	41		RM 1,999
Missing	17		
Average	2.9 project/ org.		RM48.8 /project

Note: ¹ n.t = new township; m.r = mixed residential

Objectives of housing PPP

The present study found that if they had their own way, public agencies would prefer to develop their lands independently. But because of certain internal limitations or because of external factors, they were compelled to seek outside help. The internal limitations could be unavailable (e.g. some state Islamic councils) or limited (e.g. local authorities) technical and financial resources. The external factors could be prohibition to engage in commercial activities (e.g. Islamic councils), political agenda to suddenly augment housing delivery (e.g. zero squatter policy by 2005 for Selangor) and even difficult land conditions (e.g. hilly or marshy terrain). And as mentioned in the introduction, housing PPP was the more preferred mode to joint ventures. And so, the objectives of housing PPP actually differ from one public agency to the next, even from one project to another. Overall however, the present study was able to compile the aggregated objectives of the sample population.

Table 2: Objectives of housing PPP.

Objective	Mean	S. D.	Rank	Remark
Organisation reputation	4.74	0.56	1	H. Impor.
Project reputation	4.63	0.68	2	H. Impor.
Early completion	4.63	0.60	2	H. Impor.
On-time completion	4.63	0.60	2	H. Impor.
Value for money	4.50	0.71	5	H. Impor.
Cost certainty	4.33	0.59	6	Impor.
Quality workmanship	4.28	0.84	7	Impor.
Transfer of financial risks	4.12	0.86	8	Impor.
Transfer of delay risk	4.06	0.75	10	Impor.
Innovation in design	4.06	0.80	10	Impor.
Obtain lowest development cost	4.06	0.87	10	Impor.
Obtain technical expertise	4.06	1.00	10	Impor.
Transfer of defect risks	4.00	0.75	14	Impor.
Obtain marketing expertise	3.89	0.96	15	Impor.
Transfer of cost overrun risk	3.88	0.86	16	Impor.
Transfer of sales risk	3.82	1.13	17	Impor.
Obtain capital for development	3.72	1.13	18	Impor.

Note: 1.00-1.49 = Highly unimportant, 1.50 – 2.49 = Unimportant, 2.50-3.49 = neutral, 3.50 – 4.49 = Important, 4.50 – 5.00 = Highly important

Of all the objectives tested, the respondents rated five as 'highly important' while the rest as 'important' (Table 2). The public agencies expected their organisational reputation to be enhanced by adopting the PPP concept, especially when confronted with internal and external challenges mentioned above, which coheres with Singaravelloo (2001), Alexandrou and Colpus (2001) and Susilawati et al. (2005). Scored slightly lower by the respondents were project reputation, early completion and on-time completion. The PPP arrangement had the potential to enhance project reputation, even at the launching stage as private developers are generally regarded as more efficient house-builders (Agus, 2002). Housing PPP attracted attracted housebuyers who otherwise shunned public agency housing. Incidentally, project reputation was not highlighted by past scholars but was included in the questionnaire following the pilot test . Organisational and project reputation were underpinned by other variables (e.g. completion dates, quality of workmanship, etc.) which were also tested in the study.

Of all the project-related variables, early completion and on-time completion jointly ranked the highest. The respondents scored equal means to early completion and on-time completion (just as with project reputation). This rating stands to reason as the Malaysian public attaches high importance of housing projects to completion dates. Given its prevalence, late delivery, worse non-delivery, of housing projects has become the phobia of any Malaysian house-buyer. Irate house-buyers make bad publicity; in desperation, they call anyone, from politicians, consumer groups to the media, to highlight their plight. The interviewees clarified that, to avoid negative political backlash, public agencies never renege on their obligation to deliver homes to housebuyers, no matter how late they may be. Housing project abandonment is the malaise of the private

sector, they added. The interviewees explained that private developers are better able to complete houses on or ahead of schedule due to different work values. Being highly profit motivated, they are tenacious in resolving difficulties expeditiously and are less unencumbered with debilitating procedures and meetings. To emphasise this point, one interviewee narrated of two separate but contiguous housing developments which his organisation launched at about the same time, one used the PPP format and the other self-developed. The former was completed well ahead of the schedule compared to the latter. Date of completion is also noted by Webb and Pulle (2002) and the European Commission (2003) as an objective of housing PPP.

Value for money was the last 'highly important' variable. The sampled public agencies were not highly driven to maximize profit. Being public, they merely hoped that the house-buyers would get value for money for their homes. The agencies were satisfied as long as their returns were at least equivalent to the land value as assessed by the Valuation Department, the agencies were satisfied. This ideal matches that of other countries (Webb and Pulle, 2002; Maguire and Malinovitch, 2004).

The rest of the variables can be grouped under finance, private developers' expertise and risk transfer. Under finance, cost certainty recorded higher mean than obtain lowest development cost, which in turn was higher than obtaining capital. In general, budgetary pressure was not the major impulse for housing PPP in Malaysia, which contrasted with Adusumulli (1999) and Maguire and Malinovitch (2004). Cost certainty was stressed even though the public agency's returns were locked in the agreement regardless of the development outcome. Property development is about money, said one interviewee. If there is money, the development process is smooth, he went on. In contrast to Coates (2008), the public agencies did not really emphasise on lowest development cost, which resonates with the high score given to value for money. While a few interviewees admitted that PPP helped their cash-constrained organisations to obtain capital for development, overall, this objective was the least of the respondents concerns.

The next group of variables relate to private developer's expertise. The harnessing of the private developer's expertise by the sample population concurs with Dewar (1999), Singaravelloo (2001) and Coates (2008). Quality of workmanship recorded the highest mean followed by innovation in design, technical expertise and finally marketing expertise. The interviewees conceded that private developers were more devoted towards workmanship quality than public agencies, which supported Raman (1997). They would take the trouble to inspect every part of the building including roof spaces for possible construction defects. The competitive environment drives private developers to constantly come up with innovative housing designs. The architects the public agencies engage might not even be as creative as the private developers, observed a few interviewees. The finding on innovative design coheres with Webb and Pulle (2002) and The Times of India Online (2004). Being hands-on, private developers are also technically-minded. Being commercially-minded, they are also creative in marketing which the public agencies lack.

As for risk transfer, all the interviewees emphasised that their organisations did not purposely over-burden their partners. As found from the field study, some public agencies were prompted to re-involve themselves in the development process if needed be, but with the understanding that the allocated risks remained unaltered. The re-involvement may take the form of soliciting help from their fellow colleagues in approving authorities to expedite the approval process or to expedite utility connections. The re-involvement however did not extend into actual development tasks. With the same accommodating attitude, these organisations refrained from exercising the contract stringently. Because of this, at times, problems festered to the stage where, in retrospect, stern actions should have been taken earlier. Nonetheless the interviewees conceded that risks still had to be transferred to ensure the private developers took their responsibilities seriously (Dixon et al., 2005; Grimsey and Lewis, 2005). As mentioned at the beginning of this paper, the public agencies did not assume any risk at all in the PPP arrangement. Financial risk ranked the highest, followed by delay risk, defect risk, cost overrun risk and sales risk. The greatest financial risk for the public agencies was the loss of lands they committed to the housing PPP. Prudent public agencies refrained from granting full power of attorney to their partners. If full power of attorney was given, then they demanded bank guarantees equivalent to the land value. Transferring the delay risk to the private partners motivated them to complete on time, better still before time. It was the national requirement that all housing developers must make good any defects detected by house purchasers within 18 months from the date of delivery of vacant possession, which the private partners were made to shoulder. Making private partners absorb cost overrun risk motivated them to work within budget. Interestingly sales risk had the lowest mean compared to the other types of risk, which opposes Hussin (2001). The interviews revealed that sales were always assured no matter how remote the developments were, provided the prices of the housing units were within means of the local people. In summary, just like in other countries, housing PPP in Malaysia served to meet multiple objectives.

Success and failure factors

The research then sought to identify success and failure factors of housing PPP in Malaysia. Different from past studies which just identified critical success factors, this study also ascertained failure factors and the impact of both these factors were absent, the argument being the absence of certain success factors does not necessarily lead to failure and conversely the absence of failure factors does not necessarily lead to success. Also it is erroneous to take it for granted that the degree of impact of a success factor when present is the same as the degree of the opposite effect when absent.

Table 3: Success and failure factors of housing PPP in Malaysia.

Present=highly positive, Absent =negative, OR Present	Present = positive effect, Absent =negative effect	Present =positive effect, Absent = no effect	Present =no effect, Absent =no effect	Present =positive effect, Absent =unknown effect
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=Positive, Absent=Highly negative				
Action against errant developer Robust & clear agreement	Reputable developer Constant communication Developer's profit- sharing accountability Developer's social accountability	Housebuyers' demand Negotiation skills Adequate negotiation staff Realistic projection Competition Ample time to evaluate proposal	Political influence	Consistent monitoring Compatibility between partners

The only factor which was highly positive when it prevailed and negative when it did not was action against errant developers (see Table 3). Stemming from the Asian Financial Crisis of 1997, one private developer failed to complete the last phase of a 750-acre development. Sympathetic ally, its public partner extended the completion date several times. More than ten years on and 352 dwellings were still uncompleted. Houses had been delivered during that time, but painfully slowly for the housebuyers. In retrospect, the interviewee confided that prompt stern action should have been taken. Action against errant developer as a success or failure factor had never been identified by past scholars of housing PPP before. When timely actions were delayed, problems risked degenerating beyond remedy. Not only that, subsequent PPP partners then took the dim view that the public agencies were feeble. The interviews identified inaction against errant developers mainly arose from frontline personnel with inadequate command of PPP contracts. Consequently they were daunted to confront astute errant developers as well as unsympathetic top management.

The only variable which led to positive outcome when it existed and produced highly negative outcome when absent was robust and clear agreement (see Table 3). This finding echoes the observation by the National Audit Chief (2000) and Cuorato (2002). Some of the interviewees admitted that sharp developers, not necessarily unscrupulous, had exploited loopholes in their PPP contracts. Not many consultant lawyers in Malaysia had dealt with housing PPP before, and so, engaging them could be futile. The interviewees divulged that eventually effective PPP contracts morphed through trials and errors, at times costly.

Factors which resulted in positive effect when they prevailed and negative effect when absent were reputable developer, consistent communication, developer's profit sharing accountability and developer's social accountability (see Table 3). The sampled public agencies only engaged reputable developers (Cuorato, 2002). Unfortunately doing so

was not always fail-proof. One public-listed company deliberately held up a project for more than a decade by exploiting a loophole in the contract after making huge publicity gains during project launching. The finding on the importance of communication to the success of housing PPP in Malaysia coheres with Cuorato (2002) and Dixon et al. (2005). The public agencies expected their private partners to regularly brief them on development progress. Prudent public agencies stipulated in their PPP contracts that their partners must submit monthly progress reports followed by oral presentations to top management. Some developers ignored this requirement either because of little project headway or problems encountered. As mentioned earlier, if informed early, some agencies may intervene even though not obligated to do so. However this could only happen if they were made aware of their partners' difficulties. All of the interviews admitted that their organisations had absorbed losses because profit-sharing accountability was lacking. There were cases of private developers who reneged on paying their dues as scheduled. Or when required to compensate the agencies with completed houses, unscrupulous partners had handed over units with lower quality finishings unlike those put up for sale. Developer's profit-sharing accountability had not been identified by past scholars as a success or failure factor previously. Virtually all the housing PPP examined had low-cost housing included as part of the public agencies' social obligation, but as expected, disliked by the private partners. Given the chance, they procrastinated or even absconded from this obligation. Such was the case with one developer who constructed low-cost houses well after the rest of the development was completed. The field study found that non-compliance to the bumiputera quota was lesser of an issue than non-fulfilment of the low-cost housing quota. The identification of developer's social accountability as a success factor concurs with Payne (2000).

There was a set of factors which, when existed brought positive effects but, when absent led to no effect at all (see Table 3). House-buyers' demand and realistic projections were inter-related. Defying the advice by Leung and Hui (2005) that the private developers should not be left entirely to conduct feasibility studies, the sampled public agencies expected them to do so, subject to their scrutiny of course. If the private developer's projection was a reflection of the market, all housing units in the PPP development would be taken up by the market, thereby aiding the private developer's cash flow. Interestingly, if the assessment and projection was off-target, the impact on the housing PPP was neutral, since all the houses would eventually be absorbed by the market (provided they were within the means of the local people), revealed the interviewees. Also, prudent public agencies safeguarded their returns by stating clearly in the PPP contracts that they were not tied to sales performance. The public agencies' negotiation skills and adequacy of negotiation staff were also inter-related. The findings that both these factors can contribute to project success echo Asenova et al. (2002). Both factors certainly came into use when negotiating and re-negotiating of the agreement. Curiously when absent, the effect was neutral. Those organisations which had neither of these variables sought the help of various technical approving bodies to act vicariously on their behalf. For the same purpose, they also engaged consultants.

Competition and ample time to evaluate proposal were also inter-linked. Surprisingly, the field study found that it was not the norm for the surveyed agencies to select their

partners based on competition, preferring instead to adopt the first-come, first-served approach. While acknowledging the benefits of competition, the interviewees explained that evaluating development proposals from competing tenderers was not easy as they varied in term of development layout, housing types, public amenities and such like. Selection based entirely on monetary returns would have been easy, but as pointed out in Table 2, they also had their social obligations to balance. Some agencies had suffered from poor performing partners, but none of their interviewees associated them to non-competition. This particular finding does not support the view of Coates (2008). The interviewees however concurred with Asenova et al. (2002) that competition increases bidding cost. Interestingly, the field study revealed that ample time to evaluate proposal was another variable which led to positive effect when present but no effect when absent. One experienced interviewee revealed that by focusing on certain key aspects, he could vet a proposal overnight. Besides, developers' proposals tended to be succinct. Of course, ample time allowed for better scrutiny. Actual evaluation did not in fact consume much time; it was the waiting period for the various committees to convene that protracted the entire vetting cycle. The larger the organisation, the more committees there were and therefore the longer the private developer was expected to wait for the result. Ample time allowed the entire vetting cycle to be properly completed. Ample evaluation had not been identified by any previous scholar as a success factor.

Public organisations inevitably attract political influence, the most common form for the sampled public agencies were receiving 'recommendation' of certain developers deserving housing PPP projects. However according to the respondents, when dealt with discreetly, political influence brought neutral effect when present as well as when absent (see Table 3). This finding contrasts with Singaravello (2001), Ong and Lenard (2002) and Rondinelli (2004). The most sensible approach to address the politician's request was to engage their developer friend but still to manage them like any others. Political capital rarely extended beyond the initial appointment stage.

None of the respondents indicated the effects of two variables when they were absent - consistent monitoring and compatibility between partners - implying that they had never faced such situations before. They exerted positive effect when present though, thus affirming Cuorato (2002) and Susilawati et al. (2005) respectively. Apart from technical committees which monitored the performance of private developers, one very effective mechanism was the joint management committee comprising of senior managers from both sides whose strategic could help resolve many operational issues. Their positions allowed decisions to be made and applied rapidly. When both sides were compatible, less conflict could be expected. The interviewees explained that the frontline technical and managerial personalities were most influential in shaping the relationship between the two sides at the operational level.

Best practices

Because of time limitation, only key best practices are deliberated here. A few such as engaging outside parties to act vicariously on behalf of the public agency which lack technical expertise, addressing political intervention, and competition between

developers had already been mentioned above and therefore are not repeated here. As mentioned before, they were based on 10 case studies, labeled CS 1 to CS 10.

Size of land and contract period

The study came across two cases of non-completion of PPP involving large tracts of land – 350 acres (CS 9) and 456 acres (CS 3) – the latter with no end in sight. Both beg the question of whether there should be a ceiling on the land size for PPP. When land size is huge, the time needed to develop it becomes protracted, such that the external (national economy, state politics, housebuyer profile, etc.) and internal (top management line-up, financial resources, technical capacity, etc.) circumstances may drastically change. Indeed, the housing types, design and layout had to be changed in CS 3 to cater to the shift in housebuyers' tastes and income level. With substantial investment and commitment into the PPP, the PSO may even become reluctant to terminate the agreement despite poor or non-performance, thereby making them hostage to the private partners dictates. To keep the PPP relationship alive, supplementary agreement after supplementary agreement has to be drawn up (CS 3). Based on these two cautionary case studies, a ceiling on the size of land for any PPP project should be instituted.

It is interesting to note that none of the case studies had an overt policy on maximum land size for housing PPP. Only when probed, did some of the executives started to ponder and suggest a maximum land size that should be privatised,- 20-25 acres said one public agency (CS 5), 56 acres said another (CS 4), and 20-30 acres for high potential areas and 50 acres for outlying areas suggested yet another (CS 8). One (CS 10) however refrained from proposing at all. The last proposal seems to be the most acceptable. If large developments have to be undertaken, it is more prudent to parcel out the land to several developers rather than to rely on a sole entity.

Related to the maximum land size is the maximum contract period. Of all the case studies, only one public agency (CS 10) had a policy to limit the contract to two years (with a possible extension of 6 months to a year at its discretion). As with land size, others offered suggestions only when probed. One agency opined that two years is the appropriate time-frame for PPP, provided there is no land issue such as squatters (CS 5), although its developer suggests that, realistically, three years should be sufficient for landed properties and four years for highrise dwellings if no phases are involved (CS 5). Two agencies suggested five years for multi-phase development (CS 8 and 9), which can be rationalised in the following manner: it takes about 6 months for the approval process and a further 18 months for construction. In the third year, the first phase would have been completed. In the meantime, the other phases can start and should be completed by the fifth year (CS 4). Barring extraordinary events, the allowable extension of time should also be limited to six months (CS 3).

The best practices that can be distilled regarding size of land and contract period are as follows:

Land size for an individual housing PPP should not be more than 30 acres for high potential areas and 50 acres for outlying areas. For development not involving phases, the contract period should not be longer than three years for landed properties and four years for high-rise dwellings. For phased development, five years should be the maximum contract period. The allowable extension of time should not be more than six months, barring extraordinary events. If large developments are required to be launched, it is better to parcel out the land to several PPP partners.

Commencement, phasing and completion

The commencement of the contract should be on the date of the signing of the agreement. From painful experience, one agency cautioned against using the date of approval for development plans as the commencement date as it basically allows the developer to prolong the contract period simply by submitting revision plans after revision plans for approval (CS 10). If any public agency still wants to use the date of approval as the commencement date, then the date in question must be the date of the first approval. Another agency wrongly stipulated that the construction period commenced when its partner obtained the developer’s licence, which provided a loophole for the latter to construct the shoplots (commercial units do not need developer’s licence) prior to getting the licence, thereby gaining more time for development (CS 2).

Some agencies set timetables for their private partners to begin or complete certain tasks. Such time-tables are recommended as they keep the developer’s progress in check. Otherwise the developer might give all kinds of excuses (e.g. approval not granted) for time slippages (CS 7). Table 4 gives several examples of the time-tables drawn up by some of the case study public agencies.

Table 4: Time-table set by PSO for their partners to abide

Case Study	Time table
CS 2	Submit building and other plans to the relevant approving authorities within 3 months after the date of signing the contract. Once all approvals are received, the developer must commence and complete the houses within 24 months from the date of the last approval.
CS 3	Layout plan must be submitted to the local authorities for approval within 60 days from the date of the signing of the contract. Building plans and other related plans must be submitted to the various approving authorities within 90 days after planning permission plan is approved. Work on site must commencement within 90 days after approval of all plans.
CS 6	Submit to the PSO for approval the layout plan, building plans and all other required plans within 2 months of the date of payment of all land premiums due.

<p>CS 7</p>	<p>The PSO gives its decision on the approval of the payout plan, building plans and other relevant plans within 2 months of receiving them from its partner. Upon the PSO's approval, submit immediately all the layout and building plans to the relevant authorities for approval do its utmost to get the approval with 3 months from the date of submission for the approval. Commence construction work within 3 months of obtaining approval plans from the relevant authorities. Prepare and submit development plan within 3 months from the date of the signing of the contract. Submit building plans and drawings within 3 months from the date of approval of the development plan. Any request for resubmission by the authority must be addressed within 30 days from the date of receipt of the request.</p>
<p>CS 8</p>	<p>Commence construction work within 3 months from the date of approval of the building plans and drawings. Submit design and layout plans for development from relevant authorities within 90 days from the date of agreement and shall use all reasonable endeavours to ensure that all such relevant approvals be obtained with one year from the date of agreement. Mobilise and execute the development of the land within one year from the date of agreement.</p>

For phased development, the public agency should provide a timetable for the developer to follow. One PSO requires each phase to commence no later than six months from the previous phase and that the last phase to commence 24 months for landed properties and 36 months for non-landed properties before the expiry of the completion date (CS 8). The public agency must reserve the right to take action against the developer for non-compliance to the set timetable (CS 4). The public agency must not give the partner the absolute discretion to decide when to begin the phases, even if the market is not favourable as the partner should have done proper market study before approaching the public agency (CS 7). Besides, giving the partner such discretion only invites potential delay to the development.

Still on phased development, the public agency must not allow its partner to leave low-cost housing units to the last phase as they might not do so (CS 6 and 10). One option is to get them to provide for these units in every phase (CS 1). The developers may even be prompted to construct them in the first phase if they are made to compensate evicted squatters on a monthly basis (e.g. RM 300) before they can move in to their new homes (CS 5).

What signifies completion of the contract also needs to be made explicit. Some public agencies regarded the PPP project as completed when construction work was completed (CS 2 and 8). Others insisted on certificate of practical completion from their partners' architects as prove of construction completion (CS 6 and 7). Yet others

required the certificate of fitness for occupation as indicative of the buildings having been completed according to plans and specifications (CS 2). To bring closure, the agency must request that their partners provide the final account within a certain time-frame (e.g. 12 months) from the date of completion and issuance of certificate of fitness for verification and approval, phase by phase if necessary (CS 8).

The public agency should grant extension of time for occurrences of force majeure (CS 2, 6 and 8). These events however must be clearly spelt out. The agency should penalise its partner for unjustifiable delays with liquidated and ascertained damages (e.g. RM500 per day up to six months) (CS 6). If extension of time is given, then supplementary agreements or amendments to the contract may be necessary (CS 3).

The best practices that can be distilled regarding commencement, phasing and completion are as follows:

The date of commencement of the contract must be clearly specified - the date the contract is signed is the obvious choice. PSO should lay down the timetable for their partners to begin or complete certain critical activities so as to keep their progress in check, one realistic proposal being as follows: three months maximum from commencement of contract for the partners to submit to the PSO for approval of all relevant plans, three months maximum from the date the PSO approve the plans for the partner to obtain approvals from all relevant authorities, and three months maximum from the date approvals are obtained from all relevant authorities for partner to commence construction work. For phased development, the PSO should also stipulate when each phase should begin, one realistic proposal being as follows: each phase to commence no later than six months from the previous phase and that the last phase to commence 24 months for landed properties and 36 months for non-landed properties before the expiry of the completion date. The public agency must reserve the right to take action against the developer for non-compliance to the set timetable.

Still on phased development, the public agency must not allow its partner to leave low-cost houses to the last phase as they might never materialise. Getting it to construct them in every phase, or earlier phases is recommended. The event that signifies the completion of the contract should also be explicated, the most obvious being the completion of construction work as certified by the developers' architect or issuance of certificate of fitness for occupation. The agency must request that its partner submit the final accounts within a certain time-frame (12 months) from the date of completion. The agency should allow for the possibility of extension of time, but the events that justify for the extension must be spelt out. Otherwise, the PSO might want to consider penalising the partner with liquidated damages for the delay. If extension of time is

given, then supplementary agreements or amendments to the contract may be required.

Guarantees and bonds

The public agency must insist on bonds and guarantees from its partner to safeguard against non-completion. It must be obtained before commencement of construction work (CS 3 and 7) or transfer of land to the partner (CS 6). The following are some of the bonds and guarantees that can be used.

- a. directors and/or shareholders guarantee (for a sum equivalent to the agency's entire entitlement for the whole of the development) (CS 3 and 8). This guarantee is particularly appropriate for first-time housing developers (CS 4).
- b. company bond or guarantee (CS 6). To really safeguard the interest of the agency, it might be wise to obtain both company and personal guarantees in the event that one or the other becomes bankrupt (CS 10).
- c. performance bond that could amount to a certain quantum (e.g. RM500,000) (CS 6), or percentage of GDV (e.g. 5%) (CS 5), land value (e.g. 10%) (CS 3), or builder's works (e.g. 5%) (CS 7). The performance bond can be in the form of treasury's deposit, banker's draft, banker's or insurance guarantee.
- d. bank guarantee that could amount to a certain percentage of GDV of each phase (e.g. 2.5%) before the launching of the sale for each phase of development (CS 8) or land value (e.g. 30% of cost of land) (CS 7).
- e. land bond equivalent to the value of the land (CS 5).

The agency can request for more than one bond or guarantee (e.g. bank guarantee as security for bridging loan and performance bond) (CS 7). Guarantees and bonds are usually valid for a certain fixed duration (e.g. until after six months from the issuance of the certificate of practical completion) (CS 7). The less confident the agency is of its partner's ability to fulfill their PPP obligations, the more guarantees and bonds it must obtain from its partner (CS 4). Persuasive developers, even first-time developers, however are able to get reprieve from burdensome guarantees and bonds (CS 5).

The best practices that can be distilled regarding bonds and guarantees are as follows:

PSO must request bonds and guarantees (e.g. director or shareholders' guarantees, company bonds or guarantees, performance bonds, bank guarantees or land bonds), more than one if necessary, from their partners to safeguard against non-completion. The less confident the PSO are of their partners' ability to fulfill their PPP obligations, the more onerous bonds and guarantees should be imposed.

Land ownership

The land very often belongs to the state. Usually the agency is granted ownership of land before the PPP agreement can be made (CS 3 and 5). There can be exception to the norm in that the state may choose to directly transfer the land to the developer, which actually poses risks (CS 9). The identified land for development may be Malay

reserved and the agency therefore has to appeal for the status to be cancelled, usually by suggesting a replacement piece of land to be alienated as Malay reserve (CS 6).

The agency may require the private partner to pay all expenses in relation to the land including quit rents, subdivision, contribution, rates, claims, assessments, contributions and premiums (CS 6 and 8). Some partners might only be required to pay minimum or token premium (CS 5). Whatever it is, none of these should be paid for by the agency (CS 7).

It is inadvisable for the agency to transfer the land to the private developer (CS 1, 2, 3, 5, 8 and 10). This is to avoid losing the land when its partner defaults on its contracts after having charged it to the bank (CS 9). If the agency still favours allowing the developer to raise bridging finance using the land as security, then it must provide a bank guarantee to the agency for it (amounting to partial or full land value) (CS 5 and 7). Or the partner may be made to provide bank guarantee on the repayment of the loan (CS 6). It must also be made clear that the partner must not rely on the bridging loan to pay for the developer's licence, otherwise non-approval of the loan can be used as an excuse for delay (CS 7). For the developer to be able to charge the land to the bank for bridging loan, the agency must execute a power of attorney in respect of the land in favour of the developer. Power of attorney should be given to portions of the land that the partners are able to get bank guarantees (for phased development).

At most, the PSO should only give their partners partial power of attorney. With partial power of attorney, the developer is prohibited from charging the land to the bank for bridging loan, signing transfer form and memorandum of transfer (CS 4).

One agency did not even grant partial power of attorney to the developer as it had bad experiences of partners altering the designs which it had previously agreed to (CS 8). By not granting partial power of attorney, the agency's technical department must sign all plans and forms before the developer can submit them for approval (CS 3 and 8). Even then, there are developers that try to submit the plans unbeknown to the agencies, only to be detected by the approving bodies. The agencies that do not grant partial power of attorney must have sufficient in-house technical expertise. Those that do not can engage outside consultants to act on their behalf. The agency should have more than one authorised signatory so that no delay for plan submissions arises when the person is absent from office for extended periods (CS 3). For as long as the contract is enforced, the agency cannot make adverse claim on the land (CS 2) and is prohibited against making any transactions with the land (CS 2 and 3).

The best practices that can be distilled regarding land ownership are as follows:

The public agency should refrain from giving full power of attorney to its partner for the land that is to be developed. If full power of attorney is given, then the agency must obtain bank guarantee to safeguard against loss of land. The partner must not rely on bridging loan to pay for the developer's licence. At most, the agency should only give partial power of attorney to their partners. The least risky option is not to given any

power of attorney at all, full or partial. If this option is chosen, then the agency has to sign all the plans and forms prior to submission for approval. If the agency lacks in-house technical manpower to scrutinise the drawings before signing, then outside consultants should be engaged to act on its behalf. The agency must have more than one authorized signatory to prevent delays to submission of plans for approval when the person is away from office for extended periods. The agency cannot make adverse claim on the land; neither can it make any transactions with it.

Public agency's entitlements

The public agency's entitlement can be in the form of cash, in kind or both. For the former, it can either be a fixed quantum, percentage of profit or gross development value (GDV). For one agency, there was no hard and fast rule as to which one they adopt (CS 5). The expected entitlements might even change as the project progresses. All three methods of returns are discussed below.

The agency's entitlement may be fixed at a certain quantum (e.g. RM 50 million for land and RM7 million for profit) (CS 3). The agency is likely to lose out with this method if development changes (layout, house design, etc.) are made for the better. Entitlement can be based on profit sharing basis; one agency split the profit for development on a 60:40 ratio, the 40% being the entitlement of the agency; on rare occasions, 50:50 (CS 7). Returns as a percentage of profit may tempt the private developers to fiddle the figures (by inflating expenses or including all kinds of expense items) so that, on paper, the project makes little or no profit at all, thus denying the agency of its deserved entitlements (CS 3 and 8).

A more reliable method is to base the agency's entitlements based on gross development value (GDV). One agency set its entitlement at between 10-15% (CS 1) while another three at between 20-25% of GDV (CS 4, 8 and 10). One developer opined that the agency is entitled to between 15-18% of GDV (CS 5). The percentage is lower if the development is expected to make lower profits (e.g. squatters, more public amenities, open areas or higher construction costs) (CS 2, 4 and 5). If the developer is required to put aside portions of the land for public purposes for example, the percentage can go down as low as 10% (CS 6). The public agency should stipulate that the eventual entitlement can be above that project (if the yield is higher than expected), but it cannot be below (CS 3 and 8). For sure it cannot be fixed even though layout and design changes bring in higher yield (CS 7). Some agencies expected their entitlement to match the value of the land if the computation by GDV was lower (CS 4, 8 and 10). The value of the land was that determined by the Valuation Department, although the developer might be requested to get the opinion of independent valuers (CS 5).

Some agencies required the returns be in kind, for rental or sales to their staff (CS 5) or in anticipation of increase in house prices (CS 7). In the latter case, the agency might indicate that if it is unable to sell its units within a certain period, then the developer must take them back and give the agency its entitlements in cash. Ordinarily having to market

PPP housing units encumbered the agency (unless they have a marketing section) (CS 1). When rewarded in kind, the agency must insist that its units are comparable to others in terms of quality. The contract must specify the units due to the PSO in terms of their exact location, phase of construction, build-up areas, number of rooms and types of finishes (CS 2, 7 and 10). The agency should require its partner warrants any defects found in its entitlement for a certain period (e.g. 12 months) which must be remedied at its partner's expenses (CS 6). Because of drawbacks, one agency ceased requesting for entitlement in kind (CS 8).

It is noteworthy that private developers can actually make additional profit by performing the construction work themselves (CS 2 and 4). Contractors with good credit facilities partially absorb the impact of not getting bridging loan (CS 2), and even possibly making money from low-cost housing (CS 6). Of course, unscrupulous private developers may try to make additional profit by collecting undeclared under-counter money unbeknown to the PSO (CS 1).

The best practices that can be distilled regarding entitlement of the PSO are as follows:

The public agency should avoid fixed quantum or profit sharing entitlement as it may be denied its rightful dues. Entitlement should be based on an agreed percentage of gross development value or entire land value, whichever is higher. The entitlement can be above the computation (due to higher yield), but not below. If entitlement is in kind, the agency must clearly indicate from the outset their number of units for the various housing/design types, location, phases of construction, build-up areas, number of rooms and type of finishes. The units must be comparable to other units of identical design in terms of quality. The agency's partners must warrant any defects found in the PSO's units for a certain period which must be remedied at their own expense.

Monitoring

Diligent monitoring is very important to ensure project success. Monitoring is mainly done in two ways written reports and committee meetings. The case study public agencies expected written progress report to be submitted, every month is the usual frequency (CS 3, 5 and 7) although quarterly has been observed (CS 6). One agency required its partner to provide a record and book account and prepare statement of account for the PSO within 2 weeks of the end of each month (CS 3). Private developers may furnish rosy progress reports, which is why agencies may insist that the report be certified by the partner's architect (CS 3). If meetings are never held on site, the PSO must make regular (or better still, impromptu) site visits to verify the report (CS 1), no matter how far they may be (CS 4 and 10). Hence, the agency must be given unrestricted access to the land and the site office at all reasonable times during the tenure of the agreement for inspection and preparation of inventory of progress purposes (CS 6 and 8). One PSO reserved the right to designate supervisors from time to time on site to inspect the site on its behalf (CS 7). The partner was expected to provide reasonable facilities including site office.

A joint committee comprising of representatives from both sides should be formed as quickly as possible (e.g. within 30 days from the date of agreement), chaired by someone from the private partner. It should meet regularly (e.g. monthly) (CS 7), either on site (CS 7) or in the office of either parties, or both (CS 3). Some agencies called this committee Consultant Committee (CS 3), others Management Consultative Committee (CS 3 and 8). Although not limited to, the joint-committee should focus on the following (CS 8):

- a. progress of development project, including approval applications
- b. budget and cash flow
- c. building plans and specifications (before and during construction)
- d. sales and marketing policy and strategy
- e. contract works

Minutes of meeting must be taken and their copies must be given to the agency soon (e.g. 7 working days) after the meeting. All decisions made by the joint-committee must be followed up by the private partner. For the joint-committee to be effective, the agency must have technically competent people in sufficient numbers (see Section 2.4). Short-handed technical departments may seek the help of other departments in the same PSO (CS1 and 10), or government agencies such as JKR (CS 6). The ultimate responsibility however remains with the monitoring department. Engaging outside consultants can remedy manpower shortage.

Those who are assigned to monitor the private developers in turn have to regularly report to their superiors (CS 3), or higher levels of authority at the state level (e.g. State Privatisation Committee) (CS 5). Written reports and minutes of meetings are useful for such reporting. Additionally, some agencies may require that their private partner makes visual presentation to their top management three to four times annually (CS 8).

In large public agencies, those that monitor the development might not be the same person as those who assist in the evaluation and negotiation (CS 3). The people who monitor may also be posted elsewhere which can actually be disruptive (CS 10). In such instance, the handing over of the file must be properly done. The persons taking over must be properly briefed so that he can discharge his duties properly. Every important information should be disclosed, especially for projects that are problematic. Problematic PPP projects should not be allowed to fester (CS 9 and 10). The compounded problem may become intractable to solve. The person who happens to take over the duties at that juncture becomes the unfortunate soul of having to address it.

The best practices that can be distilled for monitoring are as follows:

The partner must submit written progress reports regarding the development to the PSO regularly. These reports should ideally be certified by the partner's architect. Getting the partner to prepare statement of account every month might enhance financial monitoring. The agency must visit the site from time to time to ensure that the progress is as claimed in the report. Therefore their partner must give

unrestricted access to the site and project office at all reasonable times. The agency should reserve the right to place a supervisor on site as inspector on its behalf. The partner must provide every reasonable facility including site office to this supervisor.

A joint-committee comprising of representative from both sides must be formed just after the contract is signed (one month is reasonable) for monitoring purpose. The joint-committees must meet regularly (monthly intervals is appropriate) to look at least into the following: development progress, budget and cash flow, building plans and specifications (before and during construction), sales and marketing policy and strategy, and contract works. Copies of minutes of meeting must be given to the agency soon (7 working days is appropriate) after the meeting. All decisions made by the joint-committee must be followed up by the private partner.

Persons from other technical departments or even from other agencies may assist, if there are not enough technical staff. However the ultimate responsibility rests with the monitoring department. Engaging consultants may help alleviate manpower shortage. Transfer of file between departments (e.g. the one that evaluated and negotiated, and the one monitoring) and persons (e.g. resulting from posting) must be done properly so that the monitoring is seamless. The persons assigned to monitor PPP should not allow problematic PPP projects to fester as they might become intractable to resolve in the end.

4. CONCLUSION

Housing PPP involves state land, land that in actuality belongs to every resident of the state. For that reason, the asset should be properly utilised. When partnering with private housing developers, public agencies therefore must be clear as to its objectives. It must be cognisant of the success and failure factors so that the delivery of homes properly conducted. As the study found, public agencies do not share their experiences and knowledge of housing PPP between themselves. The study compiled best practices to overcome this limitation. However given the limited space, the more critical best practices are presented.

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