LAND LAW AND SURVEY REGULATION (SGHU 3313)
WEEK 5-LAND DEVELOPMENT

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OUTLINE

• Category of Land

• Conditions and restrictions in interest

• Subdivision, Partition, Amalgamation (Land)

• Surrender and re-alienation
CATEGORY OF LAND
Introduction

There are differences between the conditions of lands which were alienated under the land laws before the National Land Code 1965 or approved under the laws before the National Land Code 1965 but alienated under the National Land Code 1965 and those in respect of lands approved and alienated under the National Land Code 1965. The differences can also be seen between the conditions of alienated town or village lands and those of alienated country lands. Therefore, it is also necessary to understand the terms ‘town land’, ‘village land’ and ‘country land’.
Classification of Land Into Town, Village and Country Land

Five types of lands:

(a) Town land;
(b) Village lands;
(c) Country Lands;
(d) Foreshore; and
(e) Sea-bed
Classification of Land Into Town, Village and Country Land

- The provision on this is in Section 51 of the National Land Code 1965. According to this section, land is first classified as follows:
  - Land above the shoreline (S5 National Land Code 1965)
  - Foreshore and sea-bed (S5 National Land Code 1965)

- Land above the shoreline can be a town, village or country land. A town land is situated in a town declared under Section 11 of National Land Code 1965 or under the relevant provision of the land laws before it.

- A village land is situated in a village declared under the same provision as in the case of a town.

- The area not included in a town or village land is deeded to be a country land.
Classification of Land Into Town, Village and Country Land

A town or village land should not be confused with a local authority area declared under the law relating to local authority, which at present is the Local Government Act 1976 (Act 171). Within a local authority area, there may be a town or village land besides a country land.

A piece of land in a Majlis Perbandaran, is not a town land if it is not within an area declared as a town under the National Land Code 1965 or the previous land laws. That land, if it is also not within a village declared under the National Land Code 1965 or the previous land laws, is a country land.
CONDITIONS AND RESTRICTIONS IN INTEREST
Implied Conditions
Implied Conditions

- These conditions are in the law itself, that is, in the National Land Code 1965. They are not written in the document of title as in the case of express conditions.

- In National Land Code 1965, the implied conditions are not only in respect of land use. There are also implied conditions regarding the boundary marks (S114).
Implied Conditions

- The implied conditions on land use in National Land Code 1965 are listed under each of the three categories (i) agriculture (S115), (ii) building (S116), and (iii) industry (S117).

- Other implied conditions:
  
  - the implied conditions in S53(2) and S53(3) of National Land Code 1965;
  - the implied conditions in the Second and Third Schedule of National Land Code 1965; and
  - the original implied conditions preserved by operation of S4(1) of National Land Code 1965.
S114-Boundary Marks

(a) that the proprietor will, take all reasonable steps to prevent their damage, destruction or unlawful removal;

(b) that the proprietor will if any of them are damaged, destroyed or unlawfully removed, give immediate notice of the fact to the Land Administrator, or to the penghulu having jurisdiction in the area in which the land is situated;

(c) that the proprietor will, if so required by the Land Administrator, pay the cost of repairing or, as the case may be, replacing any of them which may have been damaged, destroyed or unlawfully removed; and

(d) that the proprietor will, if so required by the Land Administrator, at his own expense clear any boundary line between any of them.
S115- Agriculture

1(a) that no building shall be erected on the land other than a building or buildings to be used for one or more of the purposes specified or referred to in subsection (4);

1(b) that a bona fide commencement of cultivation of the land shall be made within twelve months of the relevant date;

1(c) that the whole area of the land of the underground land, other than any part thereof-

   (i) occupied by or in conjunction with a building (whenever erected) used for one or more of the purposes specified or referred to in subsection (4), or
   (ii) used for any of the purposes mentioned in paragraph (e) of that sub-section, or any other purpose which the State Authority may specially authorise, shall be brought fully under cultivation within three years of the relevant date;
S115- Agriculture

1(d) that the area of the land referred to in paragraph (c) shall be maintained and cultivated according to the rules of good husbandry; and

1(e) that the said area of the land shall be continuously cultivated:

Provided that the condition specified in paragraph (e) shall be regarded as complied within the case of any area of the land so long as any period during which less than the whole thereof is cultivated does not exceed twelve months.
S116-Building

1(a) that, unless on the relevant date such a building already existed on the land, there shall within two years of that date be erected thereon a building suitable for use for one or more of the purposes specified or referred to in sub-section (4);

1(b) that no part of the land shall be used for agricultural or industrial purposes (except in so far as the erection or maintenance of any building for a purpose or purposes falling within paragraph (f) or (g) of sub-section (4) may constitute such a use);

1(c) that every building thereon (when so ever erected) shall be maintained in repair;

1(d) that no such building shall be demolished, altered or extended without the prior consent in writing of the appropriate authority.
(4) The purposes referred to in paragraph (a) of sub-section (1) are the following:

(a) residential purposes;

(b) administrative or commercial purposes, or the purposes of passenger transport;

(c) the purposes of exhibiting, selling by retail, repairing or otherwise dealing in any goods or commodities, or of providing any services;

(d) the purposes of providing educational, medical, sanitary or other welfare facilities;
S116-Building

(e) the purposes of entertainment, refreshment or recreation;

(f) any purpose which the State Authority may prescribe for the purposes of this section by rules under section 14;

(g) any purpose which the State Authority may think fit to authorise in the circumstances of any particular case;

(h) any purpose incidental to a purpose falling within any of the preceding paragraphs.
S117-Industry

(a) It shall be used only for industrial purposes, that is to say, for the purposes of the erection or maintenance of factories, workshops, foundries, warehouses, docks, jetties, railways or other buildings or installations for use for or in connection with one or more of the following purposes:

(i) manufacture;
(ii) smelting;
(iii) the production or distribution of power;
(iv) the assembling, processing, storage, transport or distribution of goods, or other commodities; and
(v) such other purposes as the State Authority may rescribe.
(b) The industry shall commence operations within three years of the relevant date and that every building or installation;

(c) No such building or installation shall be demolished, altered or extended without the prior consent in writing of the appropriate authority:
   (i) for the provision of educational, medical, sanitary or other welfare facilities for the proprietor of the land or any other person lawfully in occupation thereof, or for the servants of, or any person employed for industrial purposes by, the proprietor or any other such person;
   (ii) for any purpose which the State Authority may think fit to authorise in the particular circumstances of the case.
Express Conditions
Express Conditions

- Under the land laws before National Land Code 1965, these could also be the ‘nature of cultivation’ or ‘conditions’.

- An express condition is to be found in the land title itself or is just referred to in it.

- An express condition is not in respect of land use only. Under National Land Code 1965, it can be anything which is conformable to law.

- One of the circumstances under which an express condition is imposed is when the alienation of land is approved.

- Under S124 National Land Code 1965, a proprietor of any alienated land can also apply to have his land subject to a certain express condition, to have an express condition deleted from the land title or to have the existing express condition changed to another one.
S121- Agriculture

(1) The State Authority may without prejudice to the generality of those powers, impose such conditions as it may think fit:

(a) requiring the cultivation of a particular crop;
(b) prohibiting the cultivation of a particular crop;
(c) fixing the dates in any year on or before which any work of clearing, cultivation, sowing, maturing or harvesting, or any other agricultural activity, is to be commenced or completed.
(d) limiting the maximum volume of the area of the land which may be occupied by dwelling-houses and other buildings.

(2) In this section "crop" includes trees cultivated for the purpose of their produce.
The State Authority may without prejudice to the generality of those powers, impose such conditions as it may think fit:

(a) the area of the land or proportion of the land to be built upon;

(b) the type, design, height and structure of any building to be erected on the land, and the type and quality of the materials to be used in its construction;

(c) the dates on or before which any such building is to be commenced or completed;

(d) the use to which any building is to be put.
Restrictions in Interest
Restrictions in Interest

- Under National Land Code 1965:
  (a) the restrictions on the proprietor to make any dealing (transfer, granting of lease, charge, granting of easement);
  (b) the restrictions on the proprietor to subdivide or partition his land, to amalgamate his lands or to subdivide a building.

- One of the circumstances under which a restriction in interest is determined is when the approving authority approves alienation of land. It is endorsed in the document of title.

- The restriction imposed too must be conformable to law.

- Under S124 National Land Code 1965, a proprietor of any alienated land can apply to have a restriction in interest to which the land is subject deleted from the land title, to have the existing restriction in interest amended or to have the land subject to a restriction in interest.
Specifying Area of State Land for a Certain Category of Land Use

Section 52(2) enables the State Authority to specify by a notification in the State Gazette any area within which any State land when it is to be alienated, will have in the document of title a category of land use as prescribed in the notification and so far this provision has not been invoked.
Variation of Conditions, Restrictions and Categories

The conditions (express or implied), restrictions and categories to which alienated lands are subject to specifying area of State land for a certain category of land use will be in force so long as the lands remain alienated lands and the conditions, restrictions or categories to which they are subject, are not changed under S124, S124A, S147(3) or S54 National Land Code 1965.
Lands Held Under Grant (First Grade)

- These lands are to be found in Penang and Malacca. They are subject to the condition as in Paragraph of the Third Schedule National Land Code (Penang and Malacca Titles) Act 1963.

- Under Paragraph 6 National Land Code (Penang and Malacca) Order 1965, in Penang, they can be used for any purpose. In Malacca, they are subject either to S53(2) or to S53(3) National Land Code 1965.
SUBDIVISION, PARTITION, AMALGAMATION (LAND)
Subdivision
Chapter 1 of Part Nine National Land Code 1965, subdivision of land means that any alienated land held under Registry or Land Office title may, with the approval of the State Director or Land Administrator, subdivide the land into two or more portions to be held by him under separate titles.
Application of Provision on Subdivision of Land in the NLC

- The provisions on subdivision are usually used in simple cases of subdividing land into portions for the same purpose (use).

- For cases involving conversion where a piece of land is to be subdivided into portions to be used for different purposes as in the case of the development of agricultural land for residential, commercial and industrial purposes, there are other provisions more appropriate to cater this kind of development.

- The provisions to be used are S124A National Land Code 1965 (simultaneous applications for variation of conditions etc and subdivision) or S204D National Land Code 1965 (surrender and re-alienation-special provisions).
Control of Subdivision of Land

A proprietor of land held under a final title can have his land subdivided only after he has complied with certain conditions imposed under National Land Code 1965. These conditions are mainly to ensure that the subdivision of land is done in an orderly manner so as to avoid any adverse consequences which may arise out of it.
Conditions for Approval of Subdivision (S136 NLC)

The subdivision can be approved only if certain conditions are satisfied:

(a) the restriction in interest [S136(1)(a)];

(b) the provisions and requirements of any other written law [S136(1)(b)];

(c) the approval of the planning authority [S136(1)(c)(i) and (ii)];

(d) the consent of certain body/authority [136(c)(iii)];
Conditions for Approval of Subdivision (S136 NLC)

(e) the item of land revenue outstanding [S136(1)(d)];

(f) the consent of every person/body having a certain interest in the land [136(1)(e)];

(g) the permissible area of each of the sub-divisional portions according to use [S136(1)(f)(i) and (ii)];

(h) the suitability of the shape of the sub-divisional portions [S136(1)(g)];

(i) the satisfactory means of access for the sub-divisional portions [S136(1)(h)].
The Restriction in Interest
[S136(1)(a)]

If the land is subject to a restriction in interest to the effect that a subdivision cannot be done, then the application for subdivision in respect of that land cannot be approved.
The Provisions and Requirements of Any Other Written Law [S136(1)(b)]

A subdivision of land cannot be approved if it is contrary to any of the provisions or requirements of any written law. E.g. S15(1) of the Land (Group Settlement Areas) Act 1960 prohibits the subdivision of any rural holding and as such if there is an application for subdivision of a rural holding, it has to be rejected.
The Approval of the Planning Authority or State Authority [S136(1)(c)(i) and (ii)]

- For subdivision of land situated outside a local authority area, the requirements of S136(1)(c)(i) & (ii) National Land Code 1965 are not applicable. In order to ensure that subdivision is done in an orderly manner, it is practice that the views of the respective State Town and Country Planning Departments are obtained before a subdivision of any land outside a local authority area or outside the area under the jurisdiction of the body is approved.

- However, it is more appropriate if an action is taken quickly to bring such an area under the jurisdiction of a local authority or a body having town and country planning powers.
The Approval of the Planning Authority or State Authority
[S136(1)(c)(i) and (ii)]

- It is to be noted that the State Authority may extend the application of the laws on town and country planning to area outside any local authority area. As such the requirements under S136(1)(c)(i) becomes applicable to such area.

- It is also to be noted that in exercising its power as a planning authority, the local authority or the body concerned will also seek the views of the respective State Town and Country Planning Department if the local authority or the body does not have its own town and country planning officers.
The Consent of a Certain Body/Authority [136(c)(iii)]

In same State, the State Authority has made a direction under S135(2) National Land Code 1965 to the effect that a subdivision of certain land cannot be approved unless the consent of the body/authority established under that direction has been obtained. One of the reasons for setting up this body/authority is to check the fragmentation of estates which normally gives rise to a number of social problems.
The Item of Land Revenue
[S136(1)(d)]

A subdivision of land cannot be approved if there is any item of land revenue outstanding in respect of it.
The Consent of Every Person/Body Having a Certain Interest in the Land [136(1)(e)]

If the land is subject to a charge, lease or lien or if the lease of the land is subject to a charge, lease or lien and unless in the case of the lease of part of the land where that part corresponds precisely to one of the proposed sub-divisional portions, the written consent of every person/body entitled to the benefit of the charge, lease, lien at the time the application of subdivision is made has to be obtained before the subdivision can be approved.
The Minimum Area of Each of the Sub-divisional Portions [S136(1)(f)(i) and (li)]

- A subdivision cannot be approved in respect of land subject to the category ‘agriculture’ or to any condition requiring its use for an agricultural purpose if the area of any sub-divisional portion is less than two fifths of a hectare (in Kelantan, as stated in Twelfth Schedule NLC, it should not be less than one fifth of a hectare).

- If the subdivision is in respect of land not subject to the category ‘agriculture’ or not subject to any condition requiring its use for an agricultural purpose, the area of any sub-divisional portion should not be less than the minimum area as determined by a local authority in its capacity as a planning authority (if the land is within a local authority area or within an area under a body having town and country planning powers) or by the State Authority (if the land is situated outside a local authority area or outside an area under the jurisdiction of the body).
The Shape of the Sub-divisional Portions [S136(1)(g)]

A subdivision should not be approved if the shape of each sub-divisional portion is not suitable for the purpose for which it is intended to be put.
The Access [S136(1)(h)]

A subdivision cannot be approved if any of the subdivisional portions does not have any of following means of access to a road, a river a part of the foreshore or a railway station (of these, the means of access to a public road is preferred):

(a) direct access; or
(b) a satisfactory means of access (e.g. in the form of a tract of State land set aside for access purpose); or
The Access [S136(1)(h)]

(c) any of the following means of access within the lot which the proprietor in his application for subdivision agrees to provide:

(i) over land which is to be treated as surrendered to the State Authority; or
(ii) By private road to which a separate title is to be issued; or
(iii) by a right of way to be declared by the land administrator.
Pre-Computation Plan

- S137(1) National Land Code 1965 requires, among others, that an application for subdivision should be accompanied by a pre-computation plan of the land showing the details of the subdivision. This provision came into effect in 1 January 1993.

- Pre-computation plan is defined in S5 National Land Code 1965 as a plan of the layout of lots showing the intended new boundaries and areas of those lots which are based on computation from existing survey and other relevant data. The purpose is essentially to ensure that there will not be any change in number of portions after an approval is given.
Pre-Computation Plan

In the past, changes were often made to the approved subdivision plan and such changes are not in order because there is no provision in the National Land Code 1965 allowing any change to be done. For the purpose of S137, a pre-computation plan means a pre-computation plan based on an approved layout plan. The pre-computation plan must be prepared and endorsed by a licensed land surveyor.
Survey of Subdivided Portions

A piece of land cannot be exactly identified until it is surveyed. The manner in which a survey is carried out is provided in S396 National Land Code 1965. Basically a land is said to be have been surveyed if in respect of which a lot number exists.

E.g. where a piece of land is shown in the plan as Lot No. 844, it is definite that the land has been surveyed and there is a certified plan for it. A final title can be registered for a land only after it has been surveyed in accordance with the provisions of S396 National Land Code 1965. As such the final title to the subdivided portion can only be registered upon the completion of survey.
Survey of Subdivided Portions

The subdivided portions are identified for the purpose of registering qualified titles. This is done by using a land office number (PTD. No.). This number is assigned only after the Settlement Officer demarcates the provisional boundaries of the subdivided portion on the ground. On doing so, he will record the demarcation details of the bearings and distances in his field book (or digital field book). All land office numbers given are recorded in the land office index.
Survey of Subdivided Portions Done by Licensed Land Surveyor Must Be Certified by Director of Survey

The survey of the subdivided portions can be done either by the DSMM, i.e. by a Survey Officer appointed under the National Land Code 1965 or by a licensed land surveyor registered under the Licensed land Surveyors Act, 1958. Although the survey work may be undertaken by a licensed land survey, the plan for the title has to be certified by the Director of Survey.
Survey Fees for Survey of Subdivided Portions

Where the survey is to be carried out by the DSMM, the survey fees are charged according to the rates prescribed in National Land Code (Survey Fees) Order, 1965. The rates of survey fees charged by a licensed land surveyor are provided in the Licensed Land Surveyors Regulations, 1959.

For the survey by DSMM, the land administrator should also noted the remission of survey fees that may be given under National Land Code (Survey Fees) Order, 1965.
Partition
Partition (S140 – S145)

- In Chapter 2 of Part Nine National Land Code 1965, Partition of land means:

  (a) that a land held under Registry or Land Office title by two or more persons as co-proprietors is partitioned so as to vest in each of them, under a separate title, a portion of the land of an area proportionate as nearly as may be to his undivided share in the whole [S140(1)(a) National Land Code 1965]; or

  (b) that a land held under Registry or Land Office title by more than two persons as co-proprietors is partitioned so as to vest in two or more persons to continue as co-proprietors under a separate title; and

  (c) in the remaining co-proprietor or each of the co-proprietors, a separate title [S140(1)(b)].
Control on Partition of Land

The co-proprietors of land held under a final title or a qualified title in continuation of a final title can have the land held by them partitioned only if certain conditions imposed in National Land Code 1965 have been satisfied. These conditions are mainly to ensure that the partition is done in an orderly manner so as to avoid any adverse consequences which may arise out of it.
Conditions for Approval of Partition

The partition can be approved only if certain conditions are satisfied:

(a) the agreement of the co-proprietor of the land to partition [S141(1)(a)];
(b) the area to be vested in each co-proprietor/the continuing co-proprietor [S141(1)(b)];
(c) the restriction in interest [S141(1)(c) & as in subdivision];
(d) the provisions and requirements of any other written law [S141(1)(c) & as in subdivision];
(e) the approval of the planning authority [S141(1)(c) & as in subdivision];
(f) the consent of certain body/authority [S141(1)(c) & as in subdivision];
Conditions for Approval of Partition

(g) the item of land revenue [S141(1)(c) & as in subdivision];

(h) the consent of every person/body having a certain interest in the land [S141(1)(c) & as in subdivision];

(i) the permissible area of each of the partition portions according to use [S141(1)(c) & as in subdivision];

(j) the suitability of the shape of the partition portions [S141(1)(c) & as in subdivision];

(k) the satisfactory means of access for the partition portions [S141(1)(c) & as in subdivision].
The Agreement of the Co-proprietors of the Land [S141(1)(a)]

- Except in the case of an application for partition by any co-proprietor, an application for partition cannot be approved unless each of the co-proprietors has either joined in, or consented to the making of the application for partition.

- This means that if $A$, $B$ and $C$ are co-proprietors in respect of a piece of land, the application for partition of that land cannot be approved if, e.g., $B$ does not sign the application form together with $A$ and $C$ or a written consent of $B$ to the effect that he agrees with the partition is not accompanied with the application form signed by $A$ and $C$. 
The Area to be Vested in Each Co-proprietor [S141(1)(b)]

Partition under S140(1)(a):

A partition cannot be approved if the area to be vested in each co-proprietor is not as nearly as may be proportionate to his undivided share in the whole land.

This means that if $P$, $Q$, $R$ and $S$ are co-proprietor of a piece of land of 24 hectares, the application for partition in respect of that land cannot be approved if, e.g., the area to be vested in $P$ is 3 hectares and the area to be vested in $Q$, $R$ and $S$ is 7 hectares each.

In this case the area to be held by $P$, $Q$, $R$ and $S$ should be 6 hectares each. If e.g., $\frac{1}{4}$ of a hectare is to be used for access, then the area to be vested in $P$, $Q$, $R$ and $S$ should be approximately 5.93 hectares each.
The Area to be Vested in Each Co-proprietor [S141(1)(b)]

It is to be noted that the number of portions into which a land can be partitioned cannot exceed or less than the number of co-proprietors. If a piece of land is held by three co-proprietors, then the number of portions into which the land can be partitioned is three. In this case, if in the application for partition, it is indicated that the land is to be partitioned into only two portions, then the application cannot be approved.
The Area to be Vested in Each Co-proprietor [S141(1)(b)]

Partition under S140(1)(b):

A partition of land cannot be approved if the area to be vested in each co-proprietor who wishes to have a separate title is not as proportionate as nearly as may be to his undivided share of the whole land and the area to be vested in the co-proprietors who wish to continue as co-proprietors is not proportionate as nearly as may be to their total undivided shares of the whole land.

This means that if P, Q, R and S are co-proprietors in a piece of land of 24 hectares and R and S wish to remain as co-proprietors, the application for partition of land cannot be approved if, e.g., the portions to be vested in P and Q are not 6 hectares each and the portion to be vested in R and S together is not 12 hectares.
The Area to be Vested in Each Co-proprietor [S141(1)(b)]

If, e.g., about ¼ of a hectare is to be used for access, then based on the requirement that the area of a portion must be as nearly as may be proportionate to the undivided share or the total of undivided shares, $P$ and $Q$ should each get a portion of an area of 5.93 hectares and $R$ and $S$ together should get a portion of an area of 11.86 hectares. It is also to be noted that in this example, the portions of land to be vested should not be more than three.
Application for Partition by Majority Co-proprietors

S141A National Land Code 1965 provides that a co-proprietor or co-proprietors holding the majority share in the land may apply for approval to partition the land. If the land is subject to the category agricultural, the requirement regarding access may be waived. Other requirements for the partition remain the same.
Application for Partition by Majority Co-proprietors

When land administrator receives an application for partition under S141A National Land Code 1965 and if all the conditions are satisfied, as stated in S142(3) National Land Code 1965, he has to notify the other co-proprietors/co-proprietors informing him/them of the proposed partition and requiring him/them to submit in writing within a period of twenty eight days from the date of service of the notice, any objection setting out fully the grounds on which the objection is based. Under S143(4) National Land Code 1965, if there is an objection, he has to hold an enquiry to determine whether the application should be approved or rejected. In a case where no objection is received, the approval can be given provided that all other conditions are met.
Amalgamation
Amalgamation (S146 – S150)

In Chapter 3 of Part Nine National Land Code 1965, amalgamation of lands means that two or more contiguous lots of alienated land held under separate final titles by the same person or body are combined into one and held by him or that body under single title. As stated in S146(3) National Land Code 1965, any two or more lots are considered to be contiguous if each of them shares one boundary at least in common with another of them. The lots cannot be amalgamated if they are not situated in the same town, village or mukim.
The Approving Authority

As provided in S146(2) National Land Code 1965, in the absence of any direction to the contrary by the State Authority, the approval of amalgamation shall be given by the land administrator where the lot to be amalgamated are held under Land Office titles and their combined area does not exceed four hectares, and by the Director of Lands and Mines in every other case. A direction to the contrary may be to the effect that the amalgamation is to be approved by the State Authority itself or by any other authority delegated by the State Authority.
Conditions for Approval of Amalgamation

- The amalgamation can be approved only if certain conditions are satisfied:

  (a) the restriction in interest [S147(1) & as in subdivision];

  (b) the provisions and requirements of any other written law [S147(1) & as in subdivision];

  (c) the approval of the planning authority [S147(1) & as in subdivision];

  (d) the item of land revenue [S147(1) & as in subdivision];
Conditions for Approval of Amalgamation

(f) the consent of every person/body having a certain interest in the lands [S141(1)(c) & as in subdivision];

(g) the minimum area of each of the amalgamation lot [S147(1) & as in subdivision];

(h) the shape of the amalgamation lot [S147(1) & as in subdivision];

(i) the sanction of the State Authority [S147(1)].
The Minimum Size of the Amalgamated Area

- As provided in S147(1) National Land Code 1965, S136(1)(f)(i) & (ii) of National Land Code 1965 is also applicable to the amalgamation of lands. Therefore, amalgamation cannot be approved in respect of land subject to the category agriculture or to any condition requiring its use for an agricultural purpose if the amalgamated area is less than two fifths of a hectare (in Kelantan, as stated in the Twelfth Schedule National Land Code 1965, it should not less than one fifth of a hectare).

- If the amalgamation is in respect of lands not subject to the category agriculture or not subject to any condition requiring its use for an agriculture purpose, the amalgamated area should not be less than the minimum area as determined by a local authority or a body or by the State Authority (if the land is situated outside a local authority area or outside an area under the jurisdiction of the body).
The Shape of the Amalgamation Area

As provided in S141(1)(c) National Land Code 1965, S136(1)(g) of National Land Code 1965 is also applicable to a partition of land. As such a partition cannot be approved if the shape of the portion resulting from the partition is not suitable for the purpose for which it is intended to be put.
The Sanction of the State Authority

As provided in S147(1) National Land Code 1965, the sanction of the State Authority is also necessary before any amalgamation can be approved by the Director of Lands and Mines or the Land Administrator in any of the following circumstances:

(a) where the lots to be amalgamated are all held under Land Office title and their combined area will exceed 4 hectares;
(b) where the lots to be amalgamated are held partly under Registry title and partly under Land Office title;
(c) where any dissimilarity exists between any of the lots to be amalgamated in any of the following respects:
   (i) the periods for which they are held;
   (ii) the rates at which rent is payable;
   (iii) the categories of land use, conditions and restrictions in interest to which they are subject.
The Sanction of the State Authority

- As provided in S147(3), the sanction of the State Authority to any amalgamation of lots would be to the effect that the combined area is to held under a Registry title.

- S147(3) also provides that where the lots are dissimilar on sanctioning amalgamation, the State Authority will have to give any of the following directions:
  (a) if the dissimilarity of the lots is in respect of the periods of title for which they are held, the State Authority is to give a direction relating the period for which the combined area is to be held;
  (b) if the dissimilarity of the lots is in respect of the rates at which rent is payable, the State Authority is to give a direction relating to the rate at which the rent for the combined area is to be paid;
The Sanction of the State Authority

(c) if the dissimilarity of the lots is in respect of the categories of land use to which they are subject, the State Authority is to give a direction relating to the categories for the combined area;

(d) if the dissimilarity of the lots is in respect of the conditions of to which they are subject, the State Authority is to give a direction relating to the conditions for the combined area;

(e) if the dissimilarity of the lots is in respect of the restriction in interest, the State Authority is to give a direction relating to the restriction in interest for the combined area;
SURRENDER AND RE-ALIENATION-SPECIAL PROVISIONS
Introduction

S195 NLC states that the proprietor of any alienated land held under Registry title, Land Office title or qualified title may, with the approval of the State Director or Land Administrator, surrender to the State Authority the whole or part.
Surrender and Re-alienation - Special Provisions (S204A – S204H)

The Surrender and Re-alienation – Special Provisions were included in the National Land Code 1965 through National Land Code (Amendment) Act 1984 (Act A587) which came into force on the 25 March 1985. The provisions intend to provide another way by which a land can be subdivided and the subdivided portions be used for various purposes without the proprietor having to face the risk of losing his land through the practice of surrender and re-alienation. Under these special provisions, the period of title cannot be reduced. In order words, if the land is held in perpetuity, the titles in perpetuity are also issued for the sub-divisional portions and if the land is alienated for a term of years and the period remaining is, e.g. thirty years, then the titles issued for the sub-divisional portions will not be less than thirty years.
Surrender and Re-alienation - Special Provisions (S204A – S204H)

However it is to be noted that in respect of certain land, those provisions cannot be invoked. This is so in the case of a land held by a non-Malay within a Malay reservation. The reason being that a non-Malay who holds the land even after the land was included within a Malay reservation will not be effected by reservation notwithstanding its subsequent transfer to another no-Malay. Once it is surrendered, it cannot be re-alienated to him because of the restriction under the Malay reservations laws which prohibit alienation of State land within a Malay reservation to a non-Malay.
Lands Which Can be Surrender

- S204B states that the following can be surrendered and re-alienated:

(a) any land held under qualified title and final title;

(b) two or more lands held under qualified title and final title or a combination which are contiguous and held by the same proprietor or co-proprietors
Conditions of Approval

According to S204C, the State Authority can approve an application if:

(a) the units of land to be re-alienated conform in shape, area, measurements, location and intended use with a layout plan approved by the appropriate authority;
(b) no item of land revenue is outstanding in respect of the land;
(c) land is not under attachment by any Court;
(d) there are no registered interests in the land;
(e) there is a consent to the making of the application from a lien holder, if the land is subject to a lien holder’s caveat; and
(f) there is a consent to the making of the application from the caveat or, if the land is subject to a private caveat.
Position of Land Under a Grant (First Grade) in Penang and Malacca

For any land held under a grant (first grade) in Penang and Malacca, the titles issued upon approval of surrender and re-alienation should no longer bear the phrase ‘first grade’. This is because S79 (general provision relating to approvals) does not give the power to the State Authority to determine the conditions equivalent to those under the grant (first grade). Furthermore the proprietor has the choice. If he wants the grant (first grade) states to remain, he should make an application under S137 (Applications for approval).
SURRENDER AND RE-ALIENATION-JOHOR NEW PROCEDURE
Carta Alir Permohonan SBKS and Hakmilik Blok

KML (OSC) Lulus

JTB buat permohonan SBKS dan Hakmilik Blok

SBKS

PTD

i) PTD membuka satu fail.
ii) Pendaftaran permohonan SBKS.
iii) PTD menyemak dokumen yang dihantar oleh JTB mengikut senarai semakan.
iv) PTD membuat satu Laporan Tanah dan Perakuan (Land Report).
v) 1 bulan

Hakmilik Blok

PTG

i) PTG terima fail dan buat semakan.
ii) PTG membuka satu fail.
iii) PTG menyemak dokumen yang dihantar oleh PTD.
iv) PTG menyemak dokumen yang dihantar oleh JTB mengikut senarai semakan.
v) PTG membuat satu Kertas Kerja
vi) 1 bulan

Laporan daripada PTG

Tuan tanah atau JTB hendak follow up dengan PTG. (2 bulan)

Jawatankuasa Hasil Bumi

A
Endos pelan pra-hitung (Dihantar oleh JTB kepada Bahagian SBKS PTG).

Keputusan kelulusan dihantar ke Bahagian SBKS PTG

KMP / BP

OSC 3.0

Lulus

Keputusan penuh kelulusan bersekali dengan endos pelan pra-hitung (PTG maklum dan salinan kepada tuan tanah, PTD dan JTB)

PTD terima keputusan penuh kelulusan daripada PTG

PTD Hantar Borang Persetujuan SBKS kepada tuan tanah

Perjanjian SBKS antara tuan tanah dengan PTD (Stamping) (Rujuk lampiran)

Dokumen diserahkan kepada Jabatan Penilaian bagi bayaran premium (Notis 5A-SBKS)


i) Jabatan Penilaian menghantar kiraan Notis 5A kepada PTD.

ii) JTB juga menghantar draf kiraan Notis 5A kepada PTD.

PB buat permohonan selepas SBKS dan pelan pre-hitung diluluskan dalam 21 hari.

OSC 14 hari.

iii) Akan dibatalkan jika tidak ikut tempoh masa.

iv) Jika batal, kena buat KMP/BP semula.

v) Fee hilang dan kena bayar semula.
PTD keluarkan Bayaran Notis 5A kepada tuan tanah (Rujuk lampiran senarai semakan Notis 5A)

Permohonan No. PTD baru

PTD akan hantar permohonan tuan tanah kepada PTG untuk proses kelulusan

Pendaftaran hakmilik baru (2 Bulan)

Permohonan taburan LOT BUMI (1 bulan)
Kanun Tanah Negara
BORANG 12A
(Seksyen 197)

PERMOHONAN UNTUK MENYERAHKAN BALIK TANAH
(Mengenai kesemua tanah itu)

Kepada Pentadbir Tanah, Daerah
KAMI

JOHOR BAHRU

yang beralamat di: 2nd Floor, Sales Gallery, Danga Bay, Jalan Skudai, 80200

Johor Bahru.

1) PTD 4091 2) PTD 4092
2) PTD 4092
Mukim Tanjung Kupang No. KTP 3) PTD 4098 4) PTD 4101
1) 1142381 m2 2) 483274 m2
Jenis dan No. Hakmilik
1) 1142381 m2 2) 483274 m2
dengan ini memohon kelulusan untuk menyerahkan balik kesemua tanah itu.
3) 1632.052 ha 4) 1359183 m2
5) 499668 m2

2. Sebagaimana yang didehendaki oleh seksi 197, Kanun Tanah Negara, maka sekarang saya
hantar—

(a) bayaran yang ditetapkan sebanyak RM500.00.
(b) satu surat persetujuan daripada tiap-tiap seorang daripada

orang yang berikut (iaitu orang-orang yang persetujuan mereka
dengan bertulis adalah dikhendaki kerana sebab-sebab tertentu yang dinyatakan dalam
tiap-tiap satu surat itu)†—

(1) .................................
(2) .................................
(3) .................................

(c) *suratan hakmilik yang dikeluarkan bagi tanah itu;

(d) *satu salinan surat permintaan saya kepada

*pemegang gadaian/pemegang lien supaya mengemukakan suratan hakmilik yang
dikeluarkan bagi tanah itu di Pejabat Tanah.

Bertarikh pada..............................19..............................

.........................................................

Tanda-tangan Tuan Punya

Dato' Daing A Malek bin Daing A Bajahan
560128-01-5101

Saya, .............................................

.........................................................

*Di sini mensahkan nama
pemilik dan
kedalaman
orang yang
menyadapakma.

*Di sini mensahkan
maupun
orang yang
mengakui

*Di sini mensahkan
namanya
pemilik dan
deklarasi
orang yang
menyadapakma.

*Di sini mensahkan
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orang yang
mengakui

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menguasa

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orang yang
mengakui

*Di sini mensahkan
namanya
pemilik dan
deklarasi
orang yang
menyadapakma.
### JADUAL 1
(Peraturan 2)

**PERATURAN-PERATURAN TANAH JOHOR 1966**
**PERMOHONAN TANAH KERAJAAN**

<table>
<thead>
<tr>
<th>Perseorangan</th>
<th>Untuk Kegunaan Pejabat</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sila tandakan (/) dalam kotak berkenaan.</td>
<td>Daerah:</td>
</tr>
<tr>
<td>2. Sila isi Bahagian A, B, C, D, E dan F sekitanya memohon Tanah Kerajaan.</td>
<td>Bilangan Pemohon:</td>
</tr>
<tr>
<td>3. Sila isi Bahagian A, B, C, D, E dan F sekitanya memohon dilanjutkan</td>
<td>Tarikh dan Waktu Diterima:</td>
</tr>
<tr>
<td>Pajakan.</td>
<td>Nombor Resit:</td>
</tr>
<tr>
<td>4. Sila isi Bahagian A, B, C, D, E dan F sekitanya memohon Lesen</td>
<td>Jumlah Diterima:</td>
</tr>
<tr>
<td>Pendudukan atas Pajakan Tanah Rizab.</td>
<td>Nombor Fail:</td>
</tr>
<tr>
<td>5. Sila isi Bahagian A, B, C, D, E dan F sekitanya memohon Permit Udara.</td>
<td></td>
</tr>
</tbody>
</table>

### BAHAGIAN A

<table>
<thead>
<tr>
<th>Permohonan untuk:</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Kegunaan)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Kurniaan untuk Pertanian</th>
<th>☐</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kurniaan untuk Bangunan</td>
<td>☐ Peubangunan, Bercampur</td>
</tr>
<tr>
<td>Kurniaan untuk Industri</td>
<td>☐</td>
</tr>
<tr>
<td>Pajakan Tanah Rizab</td>
<td>☐</td>
</tr>
<tr>
<td>Lesen Pendudukan Sementara atas Tanah Kerajaan</td>
<td>☐</td>
</tr>
<tr>
<td>Lesen Pendudukan Sementara atas Tanah Rizab</td>
<td>☐</td>
</tr>
<tr>
<td>Permit Ruang Udara</td>
<td>☐</td>
</tr>
<tr>
<td>Pembaharan Pajakan</td>
<td>☐</td>
</tr>
</tbody>
</table>

### BAHAGIAN B

**Dokumen-dokumen yang diperlukan untuk Permohonan Tanah:**

1. Borang Tanah
2. 2 Salinan Kad Pengenalan Pemohon Suami / Isteri
3. 2 Salinan Surat Beranak Pemohon dan Suami / Isteri
4. 2 Salinan Surat Beranak Anak-Anak
5. 2 Salinan Borang Pengesahan Ketua Jabatan (Kakitangan Kerajaan) (Suami / Isteri)
6. Bayaran RM 10.00 / RM 30.00
THANK YOU