



THE IMPLICATION OF WINDING UP DEVELOPERS ON STRATA OWNERSHIP IN MALAYSIA: A CRITICAL REVIEW

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Abstract:

The process of obtaining strata titles in Malaysia involves four procedural stages, yet many purchasers remain without formal ownership, as their properties are still held under master titles. As of June 2020, over 440,000 parcels across 1,528 schemes in Peninsular Malaysia had not been issued individual strata titles. This issue is compounded when developers undergo winding-up proceedings, leaving purchasers in a legally uncertain position. With 296 recorded cases of developer insolvency since 1984, the implications for strata ownership are significant. This critical review examines the legal, financial, and administrative consequences of winding-up developers on strata title issuance. Using a systematic analysis of statutory provisions, regulatory frameworks, and existing literature, the study identifies five key implications: increased financial burden on purchasers, restrictions on property transactions, weakened management structures, unsecured creditor status, and inheritance complications. To address these challenges, the study recommends legislative reforms, including the establishment of dedicated guarantee funds, implementation of project account systems, and enhanced regulatory oversight. These measures aim to protect purchasers' rights and ensure the continuity of strata title administration, even in cases of developer insolvency.

Keywords:

Winding Up, Developer, Strata Ownership, Implication, Malaysia

Introduction

The process of applying for strata titles in Malaysia is not straightforward and involves four main procedural stages. It begins with the preparation and approval of planning and building plans by the Local Authority (Marzukhi et al., 2019). Next, the developer must apply for a Certificate of Share Unit Formula from the State Land and Mines Office (PTG) (Zana et al., 2018). Subsequently, the proposed strata plan is submitted to the Department of Survey and

Mapping Malaysia (*JUPEM*) to get the Certificate of Proposed Strata Plan (CPSP). Finally, the application for subdivision of building or land is sent to the PTG for the issuance of strata titles (Izanda, Samsudin, & Mohsin, 2022). These procedures are mandatory to ensure that purchasers obtain strata titles as mandated under the Strata Titles Act 1985 (Act 318).

Despite these clear procedures, many strata property purchasers still do not possess their strata titles. A significant number of these properties remain under a master title, leaving purchasers without formal ownership of their units (Bakri et al., 2023; Izanda, 2023; Izanda et al., 2021; Izanda, Samsudin, & Mohsin, 2022; JKPTG, 2021a; Mahazir & Suid, 2022; Rejak Habib, 2024; Suid, 2021). As of June 2020, a total of 440,470 parcels and 1,528 schemes in Peninsular Malaysia remain under master titles (JKPTG, 2021a). The situation becomes more complicated when a developer, whose building is under a master title, undergoes winding-up proceedings. The primary factors contributing to developer insolvency often include limited cash flow (Sensini, 2016), poor financial performance and managerial inefficiency (Heracleous & Werres, 2016), fraudulent activities (Lokman et al., 2021), weak relationships with clients or the Government (Lokman et al., 2021), and fluctuations in lending rates (Abd Halim et al., 2008).

Purchasers of units under a master title do not initially hold individual strata titles. Instead, their only evidence of ownership is the sale and purchase agreement (SPA) and loan agreement. The SPA remains the sole proof of ownership until the strata titles are issued and transferred. This leaves purchasers without secure legal ownership and the indefeasibility guarantee provided under Section 340 of the National Land Code (Act 828). The winding up of a company is the formal dissolution process involving the disposal of assets, repayment of debts, and distribution of remaining assets to shareholders. (Rastogi & Dixit, 2023; S. Zainudin et al., 2015). Under the Companies Act 2016 (Act 777), there are two types of winding up in Malaysia which are voluntary and compulsory. A compulsory winding up is a statutory process to dissolve a company in severe financial distress through court proceedings, while voluntary winding up occurs through a resolution passed by shareholders. Indeed, when a developer is wound up, all its administrative affairs and assets, including land registered under a master title, are taken over by an appointed liquidator. These assets are vested in the Director General of Insolvency, who act as a receiver and manages all matters related to strata title applications (Hussin & Haji Pardi, 2003).

This study is guided by the lens of *Legal Pluralism*, which recognizes the coexistence of multiple legal systems within a single jurisdiction. As highlighted by Chevallier-Govers (2010), Malaysia's legal landscape is shaped by overlapping statutory, administrative, and religious laws that often create fragmentation in governance. In the context of strata ownership, this pluralism manifests in the interplay between land law, corporate law, and insolvency procedures. Complementing this is the *Property Rights Theory*, which emphasizes the importance of clearly defined and enforceable ownership rights. As discussed by N. H. Zainal et al. (2024), the complexity of strata lease schemes and title issuance in Malaysia underscores the need for legal clarity and institutional safeguards. Together, these frameworks provide a critical lens to evaluate the implications of developer winding-up on strata title security and purchaser protection.

Strata Ownership

Ownership is a fundamental legal concept that defines an individual's relationship to property (Rathi, 2021). According to Abdipour Fard et al. (2022), an ownership exists when an individual has a legally recognized dominion over an object or property. Ownership is considered the highest form of property rights and is one of the most essential rights in the structure of property ownership (Vivian Chinelo Arinze, 2022). In Malaysia, strata ownership is generally categorized into two types which are Master Title and Strata Title as discussed below.

Strata Title

The legal framework governing property ownership known as the strata title system is widely applied in many countries, albeit under different terminologies and with variations in implementation. In the United States, the equivalent term is condominiums, while in France it is referred to as copropriété. In Australia, Singapore, Indonesia, and Malaysia, the system is known as strata title. In Germany, the term Wohnungseigentum is used, in South Africa, it is sectional title and in England, the equivalent framework is known as commonhold (Troy et al., 2017). According to N. H. Zainal et al. (2022), strata title specifically refers to a strata development where each unit is held under an individual title. This system facilitates multi-ownership arrangements by subdividing a property vertically and granting an individual title for each unit (Izanda, 2023).

However, this research focuses on master titles because of its interest in buildings that have been occupied but have not yet been issued with strata titles due to the winding up of the developer. The absence of strata titles in such cases is often the result of a developer's failure to prepare or submit the necessary application

Master Title

A Master title is an ownership document issued during the initial stage of property development and is typically registered under the name of the landowner or the developer (Yung Huei & Samsudin, 2024). According to Rejak Habib (2024), the Master title serves as the official legal proof of ownership for the entire land parcel and all transactions related to it are controlled by the developer as the registered proprietor (Leffers & Wekerle, 2020).

The Strata Titles Act 1985 (Act 318) was established to protect the interests of purchasers and regulate developers (Ahmad Shuhaimi et al., 2022). Despite legislative amendments imposing a statutory obligation on developers to apply for strata titles, many have failed to do so, especially when the company is winding up (Izanda et al., 2021; JKPTG, 2021a; Tuan Hadi, 2023). Figure 1 below illustrates the three categories of strata buildings that can be remained under a Master title.

Strata Special Building

Special Building is a building occupied between June 1996 and 11 April 2007 or those occupied before June 1996. The purpose of this category was to allow the issuance of strata titles for developments facing documentation constraints, such as missing Certificate of Fitness for Occupation (CF) or lost original building plans (Suid, 2021).

Old Stratified Building

Old Stratified Buildings refer to multi-story developments occupied between April 12, 2007, and the enforcement date of Act A1450 (in 2016) that still not had strata title applications submitted. The introduction of Act A1450 mandated the simultaneous issuance of Vacant Possession (VP) and the strata title.

New Stratified Building

The *New Stratified Building* category refers to multi-storey developments constructed after the 2017 amendment of Act A1450 that still lack strata titles. This occurs when the landowner or developer fails to proceed with the subdivision of the building and the registration of strata titles as required by the Strata Titles Act 1985.

Winding Up of a Developer

Winding up of a company refers to the formal process of dissolving a company through a series of prescribed steps, including the disposal of assets, repayment of debts to creditors, and distribution of any remaining assets (if applicable) to shareholders (Rastogi & Dixit, 2023). This process is crucial to ensure that the company is legally terminated and that all administrative affairs are comprehensively settled. According to Vengsarkar (2021), winding up is a procedure whereby the company's assets are realised by a liquidator, and the proceeds are used to settle all debts and liabilities.

The Companies Commission of Malaysia (2018), defines winding up as the termination of a company's existence pursuant to statutory provisions, during which all of its assets are gathered for the purpose of satisfying the company's debts and obligations. The process of collecting and disposing of these assets by the appointed liquidator is referred to as liquidation.

In the context of the housing development industry, the winding up of a developer has significant implications, particularly for strata developments that remain under a master title. Hilal & Dahlan (2011) explain that when a housing developer is wound up, all business affairs and assets of the company are taken over by either a Private Liquidator, a Provisional Liquidator, or the Official Receiver (OR) under the supervision of the Insolvency Department of Malaysia. The Department acts as the Provisional Liquidator or as an appointed Liquidator in accordance with the provisions of the Companies Act 2016 (Act 777) and the Companies (Winding Up) Rules 1972.

The absence of strata titles in such cases often results from the failure of the winding up developer to complete the subdivision and registration process. Consequently, individual purchasers face substantial challenges in securing legal ownership of their respective parcels. This scenario not only delays the transfer of legal ownership but also creates a chain of legal, administrative, and financial repercussions that directly affect strata ownership rights. The following section examines these implications in greater depth, with particular attention to winding up developer on strata ownership.

The Role of the Liquidator in Facilitating Strata Title Transfer

The liquidator, whether a private professional or the Director General of Insolvency, plays a critical yet often complex role in facilitating the issuance and transfer of strata titles for wound-up developers. While their primary duty is to manage the developer's assets and settle its liabilities in the interest of all creditors, their responsibilities extend to completing the legal

requirements for strata title issuance, a task that often falls outside the scope of traditional liquidation.

Legal and Administrative Responsibilities

Upon appointment, the liquidator assumes full control over all of the developer's assets, including the master title land. Their responsibilities include:

- **Asset Tracing and Verification:** The liquidator must first identify and verify all assets, liabilities, and outstanding obligations of the developer. This includes locating and reviewing all project-related documents, such as building plans, Certificates of Completion and Compliance (CCC), and a comprehensive list of all purchasers and their respective Sale and Purchase Agreements (SPAs).
- **Completing Statutory Requirements:** This is a crucial and challenging aspect of their role. The liquidator is responsible for completing all the necessary procedural steps under the Strata Titles Act 1985 (Act 318) that the developer failed to perform. This includes appointing a licensed surveyor to conduct the land survey, submitting the necessary plans to the Department of Survey and Mapping Malaysia (JUPEM), and applying for strata titles with the State Land and Mines Office (PTG).

Financial and Operational Challenges

The liquidator's effectiveness in facilitating strata title transfer is often hindered by significant financial and operational challenges.

- **Lack of Funds:** The most common obstacle is the lack of available funds. The liquidator must use the developer's assets to cover the costs of liquidation, including professional fees for legal work, land surveying, and administrative tasks. If the developer's assets are insufficient, the liquidator may be unable to pay for these services, bringing the strata title application process to a halt. In such cases, purchasers may be asked to contribute additional funds, placing an unforeseen financial burden on them.
- **Missing Documentation:** Liquidators frequently face the problem of missing or incomplete project documentation. The developer may not have a complete set of building plans, as-built drawings, or other crucial documents required for the strata title application. Re-creating these documents can be a costly and time-consuming process, further delaying the title issuance.

The liquidator's role is inherently conflicted. They are an agent of the court, tasked with a statutory duty to settle the developer's debts and distribute assets fairly among all creditors. This duty can sometimes be at odds with the purchasers' interests, as the liquidator may prioritize the claims of secured creditors (such as banks) over those of unsecured purchasers. The liquidator's legal mandate is not primarily to ensure every purchaser receives their strata title, but to manage the liquidation process efficiently. Therefore, while they are the sole legal entity authorized to act on the developer's behalf, their actions are bound by the constraints of insolvency law, which often subordinates the interests of strata purchasers. This highlights the need for legislative reform to create a clearer, more direct pathway for strata title issuance in such cases, rather than relying on a process designed for corporate dissolution.

Implication of Winding Up Developer on Strata Ownership

In this research, five primary implications of winding up developer on strata ownership were identified. Table 1 below shows the implication of winding up developer on strata ownership encompassing financial, legal, and administrative dimensions.

Table 1: Implications of Winding Up Developer on Strata Ownership

No.	Implications of Winding Up Developer on Strata Ownership
1.	Substantial additional costs
2.	Restriction on Future Transaction
3.	Management Inability
4.	Unsecured Purchaser
5.	Inheritance Barrier

Substantial Additional Costs

The winding up of a developer may imposes substantial additional costs on purchasers. In the absence of a functioning developer, buyers are compelled to bear legal expenses associated with appointing a liquidator, obtaining court orders, or engaging professional services to process the strata title application on their behalf (Izanda, Samsudin, Mohsin, et al., 2022). These unanticipated financial burdens can also extend to administrative fees, surveyor charges, and compliance costs required to meet statutory procedures under the Strata Titles Act 1985 (Act 318) and related regulations (Hussin & Haji Pardi, 2003). JKPTG (2021a) contends that the cost of preparing all necessary plans and related documentation is significantly higher than the preparation of an as-built plan. When parcel purchasers experience financial constraints, these elevated costs exacerbated by the circumstances of a winding up developer can delay the strata title application process, eventually leading to arrears. As a result, the buyer of the parcel who is required to provide the cost of the strata title application which should be the responsibility of the developer as stated in Section 8 of Act 318.

In addition, the appointed liquidator may impose substantial administrative fees on parcel purchasers for verifying the strata title application documents and completing the instruments of transfer. Studies have shown that liquidators are legally entitled to charge a service fee, which can range from RM500 to as much as 2% of the property's market value, to execute the strata title transfer in favor of the purchaser (JKPTG, 2021a; Suid, 2021; A. L. Zainal, 2024).

Restriction on Future Transaction

According to Hussin & Haji Pardi (2003); Tuan Hadi (2023), the purchaser is the most adversely affected party, as they will have difficulties in future transactions. The purchaser is unable to transfer their parcel to a subsequent purchaser or engage in any other transactions such as lease and charge because the developer as original proprietor was in the process of winding up while the application for the issuance and transference of strata title to parcel owner had not yet been finalized (Izanda, Samsudin, & Mohsin, 2022; Rejak Habib, 2024).

Under Section 8 Act 318, the legal ownership of the development remains with the developer as the original proprietor until the strata titles are issued and transferred. When a developer is winding up prior to completing this process, the master title remains unsplit, and all dealings with it fall under the authority of the appointed liquidator. Consequently, no transfer, lease, or

charge can be lawfully registered at the land office without the liquidator's consent and the settlement of any outstanding obligations, including debts, taxes, and administrative fees. Similarly, Sal et al. (2020) reported that, winding up developer causes inconvenience for purchasers attempting to sell their properties to another buyer, as they must first obtain the liquidator. In line with A. L. Zainal (2024), present studies recognize that purchaser cannot sell their parcel at the market price if the grant still under master title and all collateral for bank loans will experience problems.

Management Inability

The winding up of a developer prior to the issuance and transfer of strata titles leaves the Joint Management Body (JMB) in a precarious operational position. According to Hussin & Haji Pardi (2003), JMB cannot be established until the issuance of strata titles. The absence of strata titles limits the JMB's statutory enforcement powers under the Strata Management Act 2013 (Act 757), as parcel owners' interests are not yet individually registered. Consequently, outstanding maintenance charges and sinking fund contributions from parcels still under the developer's name often remain uncollected due to the liquidator's delayed settlement of liabilities. The maintenance fee is an amount of money collected by JMB to maintain the building and all provided facilities. Maintenance works for damage recovery need to be carried out to ensure the building and provided facilities are in good condition (Abas et al., 2021).

As emphasised by A. L. Zainal (2024), due to winding up developer, the strata building cannot be well maintained especially when residents are likely not to cooperate well with the JMB in terms of maintenance works. Zakiah & Khadijah (2016) compelling argument that, JMB often face difficulty in obtaining consensus on various aspect of managing the strata development. As a consequence of winding up developer, this will impact in physical terms, the buildings that become obsolete and will affect the residents or unit owners in aspects of safety, comfort, healthy living and sustainability.

Parallel to this argument, Kathitasapathy et al. (2023) finds that developer's last contribution of a strata development would end upon setting up the first annual general meeting of the Management Corporation (MC) and handing over the baton from the JMB to the MC. However, in these cases, the MC cannot be formed due to winding up developer and failures in the issuance and transfer of strata titles. Fundamentally, JMB is intended to function as a temporary entity responsible for the administration and management of the building until the establishment of the MC, which occurs once at least 25% of strata titles have been successfully transferred from the developer to the purchasers (JKPTG, 2021b; A. Z. Zainudin et al., 2022). However, in cases where the developer is winding up, this transfer process often fails to be completed. Consequently, the ownership of parcels remains registered under the developer's name, and the JMB is compelled to continue managing the building beyond its legislated mandate.

Unsecured Purchaser

According to JKPTG (2021a), the purchaser in such circumstances is categorised as an unsecured creditor. Without the strata title, the purchaser's ownership is not legally perfected, and their rights are subordinated in the liquidation process. As a result, if the developer's assets are insufficient to meet all liabilities, these unsecured purchasers may not receive any financial restitution, further compounding the detriment caused by the non-transfer of the strata title. A.

L. Zainal (2024), similarly argues that, leftover assets after the payment of creditors will likely not be enough to cover the expenses of issuing the strata title.

Inheritance Barrier

In circumstances where a developer has been wound up and the strata title has not been issued, the administration of inheritance may experience significant delays. Such delays can adversely affect the property, including the potential imposition of an estate freeze by the competent authorities (Rejak Habib, 2024). Hence, the property owned cannot be inherited because the property is still under the name of the developer.

Comparative Legal Analysis: Lessons from Singapore and Australia

While Malaysia faces significant challenges when developers are wound up, particularly concerning the issuance of strata titles, other common law jurisdictions such as Singapore and Australia have implemented more robust mechanisms to protect purchasers' interests. Examining these models offers valuable insights for potential legislative reforms in Malaysia.

Singapore's Project Account System

Singapore's *Housing Developers (Control and Licensing) Act 1965* offers a powerful safeguard through its "Project Account" system. Developers are required to open a separate project account for each housing project, into which all purchase monies must be deposited. These funds can only be withdrawn for specific, pre-approved project costs. Crucially, the monies in the project account are deemed not to be part of the developer's property in the event of bankruptcy or liquidation (Teo Keang Sood, 2020).

In contrast, Malaysia's approach, where purchasers are typically considered unsecured creditors, leaves them at the bottom of the liquidation priority list, making it highly improbable for them to recover their financial contributions. The Singaporean model effectively ring-fences purchasers' funds, ensuring they are used solely for the completion of the project and shielded from other creditors' claims.

Australia's Insurance and Bond Schemes

Australia, particularly New South Wales (NSW), provides a different but equally effective layer of protection through mandatory insurance and bond schemes. These includes:

- **Home Owners Warranty Insurance:** This is a compulsory insurance policy that builders must take out. It protects homeowners against financial loss due to a builder's insolvency, death, or disappearance.
- **Strata Building Bond and Inspection Scheme (NSW):** For strata buildings, developers are required to lodge a bond (e.g., equivalent to 2% of the building costs in NSW) with a government body like NSW Fair Trading. This bond serves as a financial guarantee that can be used to fund the rectification of defects identified during final inspections.

These mechanisms shift the risk from the individual purchaser to a collective, managed insurance or bond fund. The existence of these funds ensures that there is a pool of money specifically dedicated to addressing building completion issues or defects, even if the developer is no longer solvent. The legal frameworks in Singapore and Australia highlight a fundamental difference in policy: a proactive focus on purchaser protection from the outset, rather than a

reactive, post-insolvency approach. Malaysia's current system places the burden on purchasers to navigate a complex and costly legal process, with a high risk of recovering neither their money nor their property. The Singaporean and Australian models provide clear blueprints for implementing a more robust system, such as a mandatory project account system or a compulsory insurance/bond scheme, that would provide a definitive legal and financial buffer for purchasers, thus mitigating the dire consequences of developer winding-up.

In-depth Discussion of Recommendations

This critical review's findings underscore the urgent need for a multi-faceted approach to address the legal vacuum affecting strata purchasers in Malaysia. The following recommendations, informed by the comparative analysis with Singapore and Australia, propose concrete pathways for legislative and administrative reform.

Legislative Reforms: Implementing a Project Account System

The current legal framework, which positions purchasers as unsecured creditors, is a major systemic flaw. Following Singapore's successful model, Malaysia should introduce a legislative amendment to the Housing Development Act to mandate a project account system. This would involve:

- **Establishing Fiduciary Duty:** Legally establishing that all purchaser funds are held in a trust-like capacity, separate from the developer's general assets.
- **Centralized Oversight:** Empowering a regulatory body (e.g., the Ministry of Housing and Local Government) to monitor these accounts and ensure withdrawals are strictly for project-related expenses.
- **Legal Insulation:** Enshrining a provision that explicitly states these funds are not to be considered part of the developer's assets in the event of liquidation, thereby protecting them from being seized by other creditors.

Establishment of Dedicated Funds

Beyond the project account, Malaysia could explore the establishment of a dedicated guarantee fund, similar to Australia's bond schemes. This fund could be financed through a small, mandatory contribution or bond from all housing developers. The primary purpose would be to act as a financial safety net to cover critical costs related to developer insolvency, such as the completion of a partially finished project or the rectification of major defects.

Enhanced Regulatory and Administrative Oversight

Legislative changes are only effective with strong enforcement. The government should enhance the administrative oversight of the housing development sector. A digital system could be implemented to track the progress of every housing project and the status of strata title applications in real-time. The relevant authorities should have the power to conduct compulsory financial audits of developers. For cases where winding-up is unavoidable, a specialized task force or court division could be created to handle developer insolvency cases.

Conclusion

The winding-up of developers in Malaysia presents a multifaceted challenge that directly undermines the rights and security of strata property purchasers. This research highlights five critical implications escalating financial burdens, restrictions on property transactions, weakened management structures, the precarious status of purchasers as unsecured creditors, and complications in inheritance processes. These issues converge on a central concern: the delay or failure in the issuance and transfer of strata titles, which deprives owners of legal certainty and full proprietary rights.

The findings underscore an urgent need for systemic reform. Without robust legal safeguards and administrative coordination, strata purchasers remain vulnerable to the consequences of developer insolvency. Drawing lessons from Singapore and Australia, Malaysia must adopt proactive mechanisms such as project account systems, dedicated guarantee funds, and enhanced regulatory oversight to ensure that property ownership is protected even in the face of corporate dissolution. Only through such reforms can confidence in the governance of strata developments be restored and the rights of purchasers fully upheld.

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