

**THE VIABILITY OF INTRODUCING NO FAULT LIABILITY INSURANCE IN LAND  
REGISTRATION: A PILOT STUDY**



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### **3. Report**

#### **3.1 Proposed Executive Summary**

The aim of this research is to examine the viability of introducing no fault liability insurance to registered proprietors and innocent victims who through no fault of theirs lose their property either through forgery or fraudulent dealings. The scheme will provide compensation to innocent victims who has no other means of recovering their property which they have lost through illegal means such as fraud or forgery. Currently there is no recourse available to innocent victims or registered proprietors in such dealings other than to make a police report or to sue the parties involved. However if the party who committed fraud or forgery could not be traced the innocent victims are left with no option but to make a police report and wait for the outcome of the investigation by the police. If those con artist cannot be traced then there is no remedy at all available to the innocent victims. Hence there is a need to introduce no fault liability insurance in land transaction to compensate victims who otherwise would not have any form of protection or compensation at all. This study will look into issues such as the amount of premium, public reception especially registered proprietors and property investors as well as the government's willingness to implement the proposed insurance model or compensation fund. This pilot study will adopt a qualitative approach including semi-structured interviews with the respective respondents i.e. the Attorney General Chambers, Bar Council, practitioners, insurance companies and registered proprietors.

### **3.3 Introduction**

Article 13 of the Federal Constitution provides for an individual's right to property and he shall not be deprived of his property save in accordance with the law. Thus, a registered proprietor is assured of his right over his property unless and until he is deprived of it according to the law. However, a registered proprietor may also be deprived of his property through no fault of his nor the law, and receive no compensation, for instance in fraudulent land dealings (inclusive of forgery). The non-availability of an assurance fund or something similar in nature under the National Land Code (NLC) 1965 may leave a registered proprietor without any recourse (legal or otherwise) to cover his losses. Hence, this pilot study is conducted to evaluate whether it is viable to introduce no fault liability insurance in land transaction in Malaysia in the absence of a compensation fund under the NLC.

### **BACKGROUND OF RESEARCH**

Under the Torrens system, registration is the key to a land title, hence, all instruments of dealings must be registered in accordance with the National Land Code 1965 (NLC). Section 340(1) of the NLC clearly states that a title is indefeasible once it is duly registered.<sup>1</sup> Indefeasible title means the title cannot be challenged, questioned or attacked by adverse claim. One of the objectives of the Torrens system is to provide security of tenure to the registered proprietors.<sup>2</sup> However, this security is not guaranteed if the registered proprietor loses his property by means of forgery or fraudulent transaction and the land is subsequently transferred to a bona fide purchaser for value under the proviso to section 340(3) NLC. Therefore, there is no recourse available to a registered proprietor or an innocent victim of fraudulent land dealings other than to file a police report and wait for the outcome of the police investigation. If the vendor (i.e. the fraudster or forger) cannot be traced, no criminal prosecution can take place nor can the innocent victim sue the vendor. His right of recovery is gone beyond recall. Thus, the key issue here is: the victim is left with no protection or compensation when he loses his property through no fault of his.

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<sup>1</sup> Wong, S.Y., (1975) *Tenure and Land Dealings in the Malay States*, Singapore University Press, Singapore; Buang, S., (2007) *Malaysian Torrens System*, Dewan Bahasa dan Pustaka, Kuala Lumpur, Sihombing, J., (2001) *The National Land Code 1965: Cases and Commentary*  
<sup>2</sup> Das, S.K. (1967) *The Torrens System in Malaya*, *Malayan Law Journal*, Singapore; Wong, S.Y., (1975) *Tenure and Land Dealings in the Malay States*, Singapore University Press, Singapore.