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THE LEGAL REQUIREMENTS OF APPROPRIATE HERITAGE PROPERTY VALUATION METHOD

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Abstract

Heritage property value is an important economic indicator to a country. Thus, it is imperative that the value is derived from an accurate and reliable method of valuation. However, in Malaysia, there are no specific standards that can be referred to for conducting an assessment for heritage property valuation. Thus, this paper fills the gap by reviewing five provisions of the Malaysian laws and four provisions of the international laws that are related to heritage property valuation. Thematic analysis of the documents is undertaken by using five keywords that relate to heritage property valuation, namely: definition, factors, method, procedure and type of values. Out of nine legal documents analysed, Valuation of Specialised Public Service Assets has the most information needed as a guidance for heritage property valuation.

Keywords: heritage property, valuation, law of property, Malaysian laws, international laws

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INTRODUCTION

Heritage is increasingly defined as an economic development tool. However, in order to conclusively gauge heritage-related economic impacts, measurements, tools and methodologies must be accordingly implemented and evaluated. This paper conducts a thematic analysis on the legal documents that are related to heritage property valuation in the effort to determine the procedure in conducting an assessment for heritage buildings.

HERITAGE PROPERTY VALUATION

Heritage property can be classified into two types of uses, i.e., for public use and for private use. Interest in the valuation of heritage property has increased among researchers, particularly in determining the best methods to value heritage properties. Yet, the valuation of heritage property has been met with many challenges over the time. The valuation of heritage property differs from the valuation of other kinds of assets or property because heritage property is not traded actively in the market. The uniqueness of heritage property makes it difficult to be valued using the existing conventional methods. The theory, methods, and practice of economic valuation are well established especially in valuing Grade-I heritage property. However, no studies have attempted to identify the most appropriate approach for valuing heritage property, especially for Grade-II heritage property (for example, pre-war shop-houses and pre-war housing buildings). Some of the difficulties in valuing heritage property have already been discussed in the literature through various perspectives, and the following critical issues have been identified: i) the complexity of the term is a fundamental part of why heritage property becomes difficult to be assessed. First, one needs to understand the classification of heritage property and types of values; ii) heritage property value cannot be expressed only with statistics because the heritage value is also influenced by other variables (non-use value), including intrinsic value; iii) the current methods for assessing the impact and outcomes of heritage property value are increasingly being questioned, both in terms of methodologies and the results have illuminated our understanding. If the methodology of measurement is not accurate, the results would be inconclusive; and iv) the limited availability of data might not facilitate us in understanding the valuable aspects of heritage value.

A previous study by Junainah et al. (2015) revealed that, the valuers use a conventional method for heritage property valuation where comparison approach is the main choice due to market conditions. Moreover, based on the findings, most of the valuers admitted that they did not have enough knowledge about valuation of heritage property. The valuers claimed that the comparison approach is the best approach compared to the conventional methods, but there are weaknesses that need to be dealt with in applying this approach. The main weakness of this approach is the unavailability of comparison data. So, it could

be said that it is very important to establish an appropriate method for heritage property valuation in order to produce reliable and accurate value of assessment. The unavailability of a specific guidance for heritage property valuation is the motivation for this paper.

RESEARCH METHODOLOGY

This paper adopts a qualitative document study and analysis. A document study approach is an analysis of any written material which contains information of the phenomenon being studied (Henning et al., 2004). The documents which were studied in this paper are five provisions of the Malaysian Laws and four provisions of the International laws that are related to heritage property valuation. Textual data presented in provisions of the Malaysian and International laws were analysed using thematic analysis. Thematic analysis is a method for identifying, analysing, and reporting patterns (themes) within data (Braun & Clarke, 2006). Thematic analysis of the legal documents is undertaken based on five keywords, which are, definition, factors, method, procedure and type of values.

LAWS RELATED TO HERITAGE PROPERTY

This section reviews the related statutes for heritage property valuation by looking into five keywords on heritage property valuation: definition of heritage property, factors affecting the heritage property values, methods of valuation, procedure taken for conducting valuation processes, and type of values that exist in a heritage property. The discussion is based on the following Malaysian laws: National Heritage Act 2005 (Act 645), Local Government Act 1976 (Act 171), Town and Country Planning 1976 (Act 172), Malaysian Valuation Standard 2019 (6th Edition), and MPSAS 17-Property, Plant and Equipment. The following international laws were also referred to: International Valuation Standard, Valuation of Specialised Public Service Assets, Accounting Standards Board – Heritage Assets (GRAP 103), and IPSAS 17-Property Plant and Equipment.

Malaysian Laws

National Heritage Act 2005 (Act 645)

The legislation related to building conservation was introduced with the inauguration of Antiquities Act 168, 1976, which was later replaced by the National Heritage Act, 2005 (NHA 2005). NHA is empowered by the National Heritage Department (NHD) under the Ministry of Cultural, Arts, and Heritage. This act focuses more towards building conservation. According to five keywords that have been assigned, it appears that only one important keyword is found in the NHA 2005, which is the definition of heritage property. The definition provided by NHA 2005 is diverse, which facilitates the understanding of the meaning of heritage property. Referring to NHA 2005 Part I – Preliminary 2(1), the listed definitions indicate significance definition towards Grade-II heritage

property. The Grade-II heritage properties are considered ‘heritage property’ even though they are not registered in official registrar as long as the buildings have significant historical or cultural value. They are regarded as having “cultural heritage” because they represent the same meaning for heritage property and are classified under tangible cultural heritage.

Local Government Act 1976 (Act 171)

Local Government Act 1976 (Act 171) is a Malaysian law enacted to revise and consolidate the laws relating to local government and shall apply only to Peninsular Malaysia. This act has 16 parts and is divided into 166 sections that cover a variety of matters related to the functions and role of local government. In the Local Government Act 1976, there are provisions that discuss heritage property. Section 101 (1) (c) (iv) denotes further empowerment to local authorities to maintain or contribute to the maintenance of historical buildings or sites and acquire any land, with or without buildings. This is done for the purpose of or in connection with the establishment of such public parks, gardens, esplanades, recreation grounds, playing fields, children’s playgrounds, open spaces, holiday sites, swimming pool, stadia, aquaria, gymnasia and community centres, or for the purpose of or in connection with the maintenance of historical buildings or sites. The purpose of Local Government Act 1976 is more towards the power given to local authorities inducting the maintenance on heritage property. However, no specific discussion on heritage property valuation is available.

Town and Country Planning 1976 (Act 172)

Local authorities are responsible for managing, controlling, and monitoring Town and Country Planning 1976 (Act 172). Following are the lists of the provisions contained in the Town and Country Planning Act relating to heritage property in obtaining planning permission.

The layout plans under paragraph 21A(1)(f) shall show the proposed development and in particular— Section 21B (1) (b) where the development is in respect of a building with special architecture or historical interest, particularly to identify the building including its use and condition, and its special character, appearance, make and feature and measures for its protection, preservation and enhancement;

- a) 22 (5) (j) where the development involves any addition or alteration to an existing building with special architecture or historical interest, with the conditions to ensure that the facade and other external characters of the building are retained;
- b) Section 22 (5) (k) where the development involves the re-erection of a building with special architecture or historical interest or the demolition thereof and the erection of a new building in its place, with the conditions

to ensure that the facade and other external character of the demolished building is retained.

- c) Section 58 (2) (f) the protection of ancient monuments and lands and buildings of historical or architectural interest;

For valuation purposes, these conditions will affect the value of heritage property; often they may decrease the value of the property. The conditions are as follows:

- a) The heritage property cannot be demolished and rebuilt with a new modern building; the owner of the building needs to maintain the façade of the building.
- b) Any addition or alteration made to the heritage building must obtain approval from the local authorities.
- c) Overall, heritage properties are protected by law.

Malaysian Valuation Standards 2019 (6th Edition)

Malaysian Valuation Standards 2019 (6th Edition) (MVS) are the latest valuation standards that come with 19 standards and 2 introductory chapters. The introductory chapter commences with the definitions of terms and words used in the standards. The second introductory chapter is on the general concepts and principles normally used in the valuation profession. The review focuses on the standards related to heritage property valuation. However, the findings show that the MVS does not come with specific standards regarding heritage property valuation.

MPSAS 17 – Property, Plant, and Equipment

The objective of the MPSAS 17 – Property, Plant and Equipment is to prescribe the accounting treatment for property, plant and equipment so that users of financial statements can discern information about an entity's investment and the changes in such investment. There are specific contents for heritage assets in MPSAS 17 starting from Paragraph 9 until 12. MPSAS 17 provides the meaning of heritage assets in Paragraph 10. Paragraph 10 states that some assets are described as heritage assets because of their cultural, environmental, or historical significance.

In MPSAS 17, there is a specific section that discusses heritage property but the discussions are more on the preparation of financial statements. Nevertheless, the information provided can be adopted in the valuation of heritage property, for example, the factor affecting the value of heritage property and determination of market value, among others.

International Laws

International Valuation Standards

The IVS 230 Annexe – Historic Property was removed from IVS 2017. The reason is the Board did not consider that there were sufficient unique requirements or considerations when valuing historic (real) property that warrant the inclusion of this annexe in the standards. It also provides only guidance, which under current IVSC protocols should be included in a TIP. The guidance provided is similar to that in the TIP on Specialised Public Sector Assets 2012. Another reason for the removal of this annexe is due, to the fact that it may be issued as a standalone paper providing information and guidance on some of the valuation criteria to be considered.

In addition, there have been recent changes after we completed the analysis where the International Valuation Standards Council has issued an updated version of the suite of International Valuation Standards titled IVS 2020 which took effect on 31st January 2020; the 2020 edition of IVS would be replacing IVS 2017.

Valuation of Specialised Public Service Assets

Up to now, based on a review of what? in Malaysian laws, there are no specific guidelines or standards for heritage property valuation. They need to refer to several guidelines in order to conduct the assessments on heritage property. It is interesting that in Valuation of Specialised Public Service Assets there is one section for interests in undertaking valuation for historic real properties. The section is under Asset Standards – Annexe - Historic Property. It contains Annexes A1 until A17. The Annexe gives additional guidance on matters that require consideration when valuations are undertaken for heritage assets. First, the definition on heritage property where some people may use different terms to refer to heritage property. Annexe A2 defines historic property as a real property that is publicly recognised or officially designated by a government body as having cultural or historic importance because of its association with a historic event or period, with an architectural style or with a nation's heritage. The characteristics common to historic property include the following; its historic, architectural and/or cultural importance, the statutory or legal protection to which it may be subjected, restraints and limitations placed upon its use, alteration and disposal and, a frequent obligation in some jurisdictions that it be made accessible to the public.

Annexe A3 explains that the historic property is a broad term, encompassing property types. For example; certain properties are restored to their original condition and some are only partially restored, i.e building façade; it also includes properties which are partially adapted to current standards, i.e interior space and properties that have been extensively modernised

Annexe A4 – A6 explains on the need to protect heritage property. It also provides the definition of cultural heritage and cultural property by UNESCO Glossary of World Heritage. Lastly it also states that not all heritage properties are necessarily recorded in registers. Certain properties having cultural and historic importance also qualify as heritage property.

Annexe A7-A11 specifies the factors that affect heritage property values. The valuation of heritage property requires consideration of a variety of factors that are associated with the importance of these properties, including the legal and statutory protections to which they are subjected, the various restraints upon their use, alteration and disposal and possible financial grants, tax rate or tax exemptions to the owners of such properties in some jurisdictions.

When undertaking a valuation of a heritage property, the following matters should be considered depending upon the nature of the heritage property and the purpose of the valuation:

- a) Restrictive covenants that apply to the land regardless of the owner,
- b) Preservation easements that prohibit certain physical changes, usually based on the condition of the property at the time the easement was acquired or immediately after proposed restoration of the property,
- c) Conservation easements that limit the future use of a property so as to protect open space, natural features or wildlife habitat.

The valuation of heritage property involves special considerations dealing with the:

- a) Nature of old approaches
- b) The current efficiency and performance of the property in terms of modern equivalent assets
- c) The appropriateness of the methods used to repair, restore, refurbish or rehabilitate the properties, and
- d) Character and extent of legal and statutory protection

Annexe A12-17 states the valuation approaches that can be applied in valuation of heritage property. The methods are market approach, income approach, and cost approach. The conformity of those approaches depends on the nature of the heritage property. In applying market approach, the first important requirement that should be considered is availability of market evidence. If the market evidence is available, then the market approach can be applied. The market evidence should be similar with the subject property. Other criteria for selection of comparable properties include architectural style, property size, specific cultural or historic associations of the subject property, and similarity in locations with regards to zoning, permissible use, legal protection and concentration of historic properties. The adjustment may have to be made to the comparable sale with regard to their differences in factors affecting the values. Heritage properties fully utilised for commercial purposes may be valued by means of the income approach. When applying the cost approach for heritage

property, consideration is given to whether the features of the heritage building would be of intrinsic value.

Accounting Standards Board – Heritage Assets (GRAP 103)

Accounting Standards Board – Heritage Property (GRAP 103) is set out in Paragraphs .01 to .98. The objective of this standard is to prescribe the accounting treatment for heritage assets and related disclosure requirements.

Paragraph .04 defines the terms used in the standard what?, and one of the terms is related to heritage assets. The standard defines heritage assets as an asset that has a cultural, environmental, historical, natural, scientific, technological or artistic significance and are held indefinitely for the benefit of present and future generations.

Paragraph .06, there are several characteristics often displayed by heritage assets. Some of the characteristics may affect the value of this asset. either they increase or increase the values. The characteristics are as follows:

- a) Heritage property value may increase over time even though their physical condition deteriorates (increase the value)
- b) Heritage property value are protected, kept unencumbered, cared for and preserved (decrease the value)
- c) The value in cultural, environmental, educational and historical terms is unlikely to be fully reflected in monetary terms (use value and non-use value)

In this standard, Paragraph .13 states that the heritage assets can be recognised as an “heritage asset if:

- a) The future economic benefits or service potential associated with the asset will flow to the entity, and
- b) The cost or fair value of the asset can be measured reliably

With reference to the above underlined sentence “the cost or fair value of the asset can be measured reliably” is parallel with the aim of this study in identifying the appropriate approach for heritage property valuation in ensuring its reliability, validity of the values.

Paragraph .35 to 0.45 discusses on determining fair value. The standard defines fair value to be the same with the market value. The value of a heritage asset is the price at which the heritage asset could be exchanged between knowledgeable, willing parties in an arm’s length transaction. The willing buyer and the willing seller are reasonably informed about the nature and characteristics of the heritage asset, its actual and potential uses, and market conditions at the date of the revaluation.

In Paragraph 0.43, we can find that this standard recognises a valuer as a person who is qualified to undertake the valuation exercise for heritage assets. The values of heritage property can be obtained from the active market and it is the best evidence for fair value. However, there is a situation where the evidence

is not available and the valuation profession may use any valuation technique to determine fair value. For man-made heritage structures such as monuments, the fair values are usually determined by using a replacement cost approach.

There is one section discussing the inability to determine fair value reliably. The discussion starts from Paragraphs .55 until .58. There is a presumption that fair value can be measured reliably for heritage assets if the market evidence is available. However, the presumption can be rebutted when market evidence (heritage property prices) is not available. Besides, the alternative method to estimate the fair value of heritage property is seen as clearly unreliable.

IPSAS 17-Property, Plant and Equipment

IPSAS 17-Property, Plant and Equipment was developed by the International Public Sector Accounting Standards Boards to converge public sector accounting standards with private sectors standards.

Under Heritage Assets Standard in Paragraph 9, some assets are described as “heritage assets” because of their cultural, environmental or historical significance. Examples of heritage assets include historical buildings and monuments, archaeological sites, conservation areas and nature reserves, and works of art.

The standard also states that it is important to determine the fair value based on recent market evidence. The discussion is similar with Accounting Standards Board-Heritage Asset (GRAP 103) where market evidence is used to determine the fair value, and the valuation process is undertaken by a person with a relevant professional qualification. Under Paragraph 47, if no market evidence is available to determine the market value in active market for heritage property, the fair value of heritage property may be established by reference to other similar properties (similarity in terms of characteristics, circumstances and location). However, this is difficult to find.

RESULTS OF ANALYSIS

Table 1 summarises the review on the related laws on heritage property valuation. In Malaysia, there are no specific standards that can be referred to for conducting an assessment for heritage property valuation. A valuer needs to refer to several standards as follows:

- a) Malaysian Valuation Standard 2019 (6th edition) is very important for the valuation profession. MVS describes the procedure for conducting real estate appraisal including methods of valuation, factors affecting the value, several important concepts such as market value, highest and best use, and others. MVS is very important in the valuation process because it will affect the accuracy of value estimation. However, MVS provides general

descriptions of property valuation. No specific explanation is available for the interest in undertaking an assessment for heritage property.

- b) National Heritage Act 2005 (Act 645) focuses more on heritage property conservation and preservation. NHA 2005 provides the definition and the classification of heritage property.
- c) MPSAS 17-Property, Plant and Equipment. So far in Malaysia, this standard is most related to heritage property valuation. However, the purpose of the standard is for preparation of financial statements. MPSAS 17 provides the information on the definition of heritage property and the historical factors affecting the heritage property value, either increasing or decreasing the value.
- d) Town and Country Planning Act 1976 (Act 172) - Restriction on heritage property. For each development, approval must be obtained from the local authority and must comply with the listed conditions provided in Town and Country Planning Act. For example, for any addition, alteration or re-erection of heritage building, the owner must ensure that the building façade is retained.
- e) Local Government Act 1976 (Act 171). It enlists the power given to the local authority regarding the heritage property matters related to maintenance works.

At International level, the review suggests that the practice of heritage property valuation is more guided compared to Malaysia. This is based on the existence of several legal provisions as follows:

- a) *Valuation of Specialised Public Service Assets*. This provision provides a section for heritage property known as Annexe - Historic Real Property. It provides detailed information for conducting heritage property valuation including the definition of heritage property, factors that affect the value, the valuation methods, procedures and types of value comprising in heritage property.
- b) *Accounting Standards Board-Heritage Assets (GRAP 103)*. This provision is specifically for financial statement preparation but we can still use this standard for heritage property valuation. There is one section that emphasises the determination of market value for heritage property. It is important to take note that this requires the market value of heritage property to be determined based on market evidence, but question arises as to what will happen if the market evidence is not available. The GRAP 103 states that there is no clear method to be used if the market evidence is not available, which leads to the need to identify an appropriate approach that considers the thin market issue.
- c) *IPSAS17-Property, Plant and Equipment*. The explanation is similar to GRAP 103.

Table 1: Review on the Laws that are Related to Heritage Property Valuation

Malaysian Laws	Keywords for heritage property valuation				
	Definition	Factors	Method	Procedure	Type of Values
1. National Heritage Act 2005 (Act 645)	/				
2. Local Government Act 1976 (Act 171)		/			
3. Town and Country Planning 1976 (Act 172)		/			
4. Malaysian Valuation Standard 2015 (5 th Edition)					
5. MPSAS 17-Property, Plant and Equipment	/	/		/	/
International Laws	Keywords for heritage property valuation				
	Definition	Factors	Method	Procedure	Type of Values
1. International Valuation Standards 2011					
2. Valuation of Specialised Public Service Assets	/	/	/	/	/
3. Accounting Standards Board – Heritage Assets (GRAP 103)	/	/	/		/
4. IPSAS 17-Property, Plant and Equipment	/		/		

Notes:

MPSAS 17 and GRAP 103 provide detailed explanations about heritage property. These can be applied for valuation purposes however the explanation is more on financial reporting.

VSPSA provides an explanation on heritage property valuation.

CONCLUSION

This paper has highlighted the unavailability of specific guidance for heritage property valuation in Malaysia. This has been the motivation for the attempt to gather and analyse the legal documents that are available to the public. Eight documents were identified. A thematic analysis based on five keywords of heritage property valuation has been undertaken. Out of 8 legal documents analysed, VSPSA has the most information needed as a guidance for heritage property valuation. Further concerted efforts can focus on developing a specific guidance for heritage property valuation in Malaysia.

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