

COMPARATIVE ANALYSIS OF IMMOVABLE REAL ESTATE CONVENTIONAL PUBLIC AUCTION PRACTICES IN MALAYSIA, AUSTRALIA AND NEW ZEALAND

N. Shaari¹, M. A. Sulaiman^{*1}, A. S. Sukereman¹ and M. N. Alias¹

¹ College of Built Environment, Universiti Teknologi MARA Shah Alam, 40450 Shah Alam, Selangor, Malaysia.

**corresponding: azwan@uitm.edu.my*

Article history:

Received Date:

24 December
2024

Revised Date: 1

May 2025

Accepted Date:

1 June 2025

Keywords:

Public Auction
Practice, Real
Estate, Atlas.ti,
Immovable
Property, Law

Abstract— This study examines and compares public auction practices for real estate in Malaysia, Australia, and New Zealand. While Australia and New Zealand have well-established, transparent, and efficient auction systems, Malaysia's auction process regulated by the National Land Code 1965, includes both judicial and non-judicial methods, which may introduce complexity and redundancy for stakeholders. The primary objectives of this study are to analyze the auction practices in Malaysia relative to those in Australia and New Zealand and to identify best practices that could enhance Malaysia's real estate auction system. This research employs

and Regulations	content analysis and desktop research, with data coded and analyzed using Atlas.ti (version 23). Australia and New Zealand have a robust auction culture where competitive bidding is common, offering real-time insight into real estate market dynamics. For Malaysia, adopting key elements from these established systems could enhance efficiency and transparency. Recommendations for improvement include implementing standardized, market-driven approaches, enabling internal property inspections, enforcing stricter regulations, and introducing remote bidding options. These best practices could help Malaysia's auction system become more streamlined, market-responsive, and accessible to a broader range of participants.
-----------------	--

I. Introduction

Particularly for varied goods and investment assets, such real estate [1], auctions have always been a major tool used in price determination. Dealing not only in art and antiquities but also in many commodities like offshore oil and communications licenses, real estate, procurement contracts, and even basic consumer products, auctions have grown even more important [2]. An auction according to [3], a means of

competition between possible buyers and sellers aiming to either buy or sell a good or service. Actions can be seen as games in which the bidders and auctioneer are players with various strategies who get varying results according on their chosen approach [3, 4].

English auctions, first-price sealed-bid auctions, second-price sealed-bid auctions, and Dutch auctions comprise four basic forms according to Milgrom [4], Baye [3], and

Klemperer [5]. Most often known is the English auction. Baye [3] claims that this kind of auction allows bidders to view the bids placed by others and thereafter choose whether to raise their own price. The auction goes sequentially, with bids rising as the process keeps on. When only one bidder remains, the auction ends and the object is purchased by that bidder who then pays the auctioneer the precise bid [2].

II. Literature Review

A. Overview of Immovable Real Estate Auction in Malaysia, Australia and New Zealand.

The immovable real estate auction system has been an important part of many countries' property markets for a long time. It is a clear and efficient way to buy and sell homes. In Australia and New Zealand, public sales are very common. However, each country has its own customs that reflect its own legal, economic, and cultural settings. Understanding how this auction systems work on a deep level is helpful for everyone involved,

such as buyers, sellers, policymakers, and real estate experts.

In the real estate markets of Australia and New Zealand, auctions are a central component, even during non-boom market cycles and for non-distressed properties [6]. Malaysia, Australia and New Zealand have one obvious similarity. It is the law system that binds them which is common law [7, 8]. Common law was introduced in countries colonized by the British and uncoded and based on precedents, prior judicial decisions in similar cases [9]. Judges select precedents for new cases, and it operates in an adversarial system where opposing parties present their cases to a judge, who modifies the verdict [10].

The land administration system of Peninsular Malaysia is modelled after the Torrens system of Australia [11]. Sir Richard Robert Torrens, the inventor of this system, implemented it in Australia [12]. To ensure that any discriminatory or incorrect title loss is adequately compensated,

the compensation plan was implemented [13].

The compensation scheme is widely recognized as one of the most critical components of the Torrens system, even though other countries are implementing land registration systems without a compensation program. Among the other countries are Sudan, Fiji, Germany, Austria, and Malaysia [11]. The Torrens land registration system is characterized by the provision of compensation offerings to compensate individuals who have lost their land or suffered losses because of system failure [11]. It is imperative that the Malaysian land administration system recognizes the legitimacy of a variety of legal sources, such as equity, common law, Islamic law, and customs, as per Kamilah [11]. The Torrens system is not exclusive. The state is responsible for land matters in Malaysia.

B. Malaysia Immovable Real Estate Auction System.

Usually, Malaysia's property public auction process is carried out using their own method whereby three bodies namely financial institution, land office, and High court, as shown in Figure 1. Yahya [14] stated, Land office and court is under judicial auctions which public sale by land office solely involves land office title meaning the title shown by mukim grant and mukim lease or by any title documentation registered with the land office under the requirements of any earlier land law.

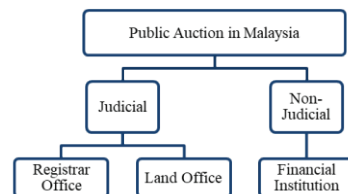


Figure 1: Immovable Property Public Auction Practice in Malaysia

The National Land Code 1960 controls court auctions under high court. Figure 2 shows the process to initiate a public auction in Malaysia.

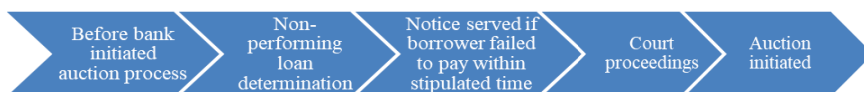


Figure 2: Process to Initiate a Public Auction for Immovable Property

C. Australia Immovable Real Estate Auction System

In Australia, the Sale of Land Act 1962, Sale of Land (Public Auctions) Regulations 2014, and the Property and Stock Agents Act 2002 governed the immovable real estate auctions. The vendor sets a reserve price, but bidders can choose their own price. Bidding is mandatory, and registration requires providing personal information and identification. If a bidder is uncomfortable with bidding, they can authorize someone else to bid on their behalf. Vendors can make up to three vendor bids, each lower than the reserve price. The vendor's statement, also known as Form 1, is an official legal document that provides details about the property's ownership, mortgages, easements, zoning regulations, and expenses. Buyers must have their information notice available at least three business days before the auction and at the auction site 30 minutes before the scheduled start.

Form R3 is a comprehensive inventory of elements that may impact bidder satisfaction,

security, or property worth. Agents must provide precise details about the location and designated time for accessing Form 1 through newspaper advertisements, promotional materials, or displaying a 'for sale' signboard. The auction ends when the highest offer is placed. If the bidding does not reach the reserve price, the seller has the option to reject the sale, engage in discussions with bidders, or put the property up for sale on the public market. Contract agreements are typically executed, and a deposit is submitted on the day of the auction. Inspections, such as building or pest inspections, should be done before the auction. Approval for extraordinary circumstances must be obtained during the auction registration procedure [15].

D. New Zealand Immovable Real Estate Auction System

In New Zealand, the Fair-Trading Act 1986 governs immovable real estate auctions. To participate effectively,

bidders must conduct a thorough investigation of the property, including collecting important details, evaluating its worth, and examining its legal status. They should also consult legal experts and inform their agent about their intention to participate in the bidding process. Bidders must verify their financial situation in advance, as auctions are binding and may require a deposit on the day of the auction.

Bidders can use telephone bidding or designate a proxy to act as a proxy. Auctions can be conducted at various venues, such as the property, a real estate agent's establishment, or the auctioneer's premises. Bidders can register with their agent or contact the selling agent. The seller establishes a reserve price at the beginning of the bidding process, and the auctioneer works to obtain the highest bid [16]. If the reserve price is not met, bidders have several options, such as reducing the reserve price, engaging in private negotiations, or passing the property.

Upon winning the auction, bidders must execute the

agreement and provide the purchase deposit. The auctioneer may execute the agreement on bidder's behalf, and the agreed conditions must be fulfilled within specified periods. If the property is not sold, the highest bidder can negotiate with the seller through the agent after the auction. Payment for the agreed property amount must be made on the settlement date, usually through a lawyer or conveyancer [17].

III. Research Objectives

The objectives of this research paper are to compare the immovable real estate auction practices in Malaysia with those in Australia and New Zealand and to identify best practices and potential improvements for Malaysia.

IV. Research Methodology

The sources of data for this paper are from the primary and secondary data collection. The sources are from National Land Code 1965, Common Law, Sale of Land Act 1962, Sale of Land (Public Auctions) Regulations 2014, Property and Stock

Agents Act 2002, Real Estate Agents Act 2008 and Fair Trading Act 1986.

V. Data Analysis

The analysis is done with Atlas.ti version 23 software. The researcher searched all the relevant documents such as legal Acts, reports and previous studies to be imported and organized in the project folder. The documents will be coding into few themes. After coding is completed, the data will be analyzed and tabulated for data visualization.

VI. Results and Discussion

Malaysia, New Zealand, and Australia all have very different real estate sale systems in terms of their laws, how auctions work, how the market sees them, and how they are regulated. There are both court and non-judicial foreclosures in Malaysia, which are regulated by the National Land Code 1965.

A Proclamation of Sale is needed for judicial auctions, which are usually ordered by the High Court or approved auctioneers. Non-judicial

auctions, which are usually run by banks, have strict rules that must be followed before the auction, but there is no internal inspection [18].

New Zealand auction system is less centralized and more market-driven. It is mostly made up of non-judicial sales that are governed by the Sale of Land Act 1962, the Sale of Land (Public sales) Regulations 2014, and the Property and Stock Agents Act 2002. In New Zealand, auctions are open and competitive, and private auction houses and real estate firms often help with the process.

Bidders must check their finances ahead of time and provide a full property inspection report for these sales, which may also offer the option to bid from afar. Australia also has a lot of people who like to buy and sell land at auctions, which are regulated by laws like the Fair Trading Act 1986. With internal inspections as a necessity, the process is open and competitive.

Australian bidder that taking part in dummy bids is illegal and can be fined. This is because the

country has strict rules that protect consumers. Malaysia has a lot of foreclosure sales, but the process is often seen as hard to understand, which can keep people from bidding.

In New Zealand and Australia, auctions are popular and widely used as a way to buy and sell property, and they are supported by rules that fair and transparent. Australia and New Zealand use non-judicial bids to sell property. In Australia, most of the cities recorded more than 60% turn-over rates where Sydney and Melbourne have recorded their clearance rates in 2024 [19].

The legal system is controlled by rules that are unique to each state. This allows for local control and flexibility in responding to changes in the market. Auctions are a popular way to sell homes because they allow buyers to compete and are open about how they work. Australian and New Zealand housing markets, which have documented a price premium associated with auction sales [20].

VII. Conclusion

Malaysia can improve its real estate auction system by adopting best practices from New Zealand and Australia. This includes improving transparency and competitiveness through a standardized, market-driven approach, requiring internal inspections and comprehensive property reports, adopting strict regulatory measures to prevent unethical practices like dummy bidding, and encouraging remote bidding options. Simplifying the judicial auction process and streamlining it could make it more attractive to bidders.

By integrating these best practices, Malaysia can create a transparent, competitive, and user-friendly auction environment. It is suggested that future research can study on the current trend of real estate auction process particularly in online auction or E-auction for better understanding of real estate auction field.

VIII. Acknowledgement

This research was supported by the Ministry of Higher Education through the Fundamental Research Grant Scheme (Grant No. FRGS/1/2023/SS06/UITM/02/16) and Universiti Teknologi MARA.

IX. References

- [1] S. Dalland, R. Hammervold, H. Karlsen, A. Oust, and O. J. Sønstebo, "Aggressive bidding strategies in real estate auctions – a structural equation modelling (SEM) approach," *Journal of European Real Estate Research*, vol. ahead-of-print, 2021.
- [2] S. Azasu, "Auctions in the Real Estate Market – A Review," 2016.
- [3] M. R. Baye, *Managerial Economics and Business Strategy*, International Edition. New York: McGraw-Hill, 2003.
- [4] P. Milgrom, "Auctions and Bidding: A Primer," *Journal of Economic Perspectives*, vol. 3, no. 3, pp. 3-22, Summer 1989.
- [5] P. Klemperer, *Auctions: Theory and Practice*. Princeton, NJ: Princeton University Press, 2004.
- [6] R. Hungria-Gunnelin, "An analysis of auction strategies in apartment sales," *Journal of European Real Estate Research*, vol. 11, no. 2, pp. 202-223, 2018.
- [7] K. H. Ng and B. Jacobson, "How Global Is the Common Law? A Comparative Study of Asian Common Law Systems - Hong Kong, Malaysia, and Singapore," 2017. [Online]. Available: <https://ssrn.com/abstract=3030969>.
- [8] K. W. Gray, "The 'New' Uses of International Law in Common Law Countries," 2023. [Online]. Available: https://www.corelogic.com.au/___data/assets/pdf_file/0029/22979/Weekly-market-update-week-ending-2024-June-2.pdf.
- [9] M. Fordham, "Comparative Legal Traditions - Introducing the Common Law to Civil Lawyers in Asia," *Asian Journal of Comparative Law*, vol. 1, 2006.
- [10] V. O'Connor, "Common Law and Civil Law Traditions," 2012. [Online]. Available: <https://ssrn.com/abstract=2665675>.
- [11] K. W. Mohd and S. Z. Syed Abdul Kader, "Overview of the compensation scheme under the Torrens system: An analysis for adoption in Peninsular Malaysia," *Journal of Asian and African Social Science and Humanities*, vol. 2, no. 3, pp. 1-11, 2016.
- [12] R. Muhammad Serji, "Pemakaian Islam dan Adat Melayu dalam Sistem Torrens di Malaysia," vol. 1, pp. 13-26, 2018.
- [13] The Torrens System Compensation and Insurance Principle. Report 76 (1996)-Torrens Title: Compensation for Loss, Retrieved from <http://www.lawlink.nsw.gov.au>

- [14] Z. Yahya, M. N. Daud, and W. S. Chan, "Investigating the Characteristics of Unsold Residential Properties at Public Auction Sales Using Multiple Regression Analysis (MRA)," *Universiti Malaya Working Paper*, 2008.
- [15] Government of South Australia, "Rules for offers, auctions and buying off the plan," 2023.
- [16] A. H. Naif, "Bidding method and system," 2020.
- [17] Real Estate Authority, "New Zealand residential property sale and purchase agreement guide," 2022. [Online]. Available: <https://rea.govt.nz>.
- [18] N. Shaari, N. A. Sulaiman, M. N. Alias, and N. A. R. Lestari, "Current Review on Issues and Challenges for the Immovable Property Auction Process In Malaysia," *Environment-behaviour proceedings journal*, vol. 9, no. 28, 2024.
- [19] CoreLogic, "Weekly market update: Week ending June 2, 2024," 2024.
- [20] A. Frino, M. Peat, and D. Wright, "The impact of auctions on residential property prices," *Accounting and Finance*, vol. 52, no. 3, 2011.