

Salient features of the proposed Land Transactions (Electronic) Regulations, 2020

The proposed Land Transactions (Electronic) Regulations, 2020 represent yet another step towards completion of the long overdue digitization of land administration and registration in Kenya

Background

The Land Transactions (Electronic) Regulations, 2020 were released for public participation and consultation by the Ministry of Lands and Physical Planning, in consultation with the Cabinet Secretary, the National Treasury and the National Land Commission. Due to the restrictions on public gatherings on account of COVID-19 pandemic, the consultations were undertaken through virtual meetings were to take place. The Land Transactions (Electronic) Regulations comprise of the following proposed Statutory Instruments:

1. Land Registration (Electronic Transactions) Regulations, 2020;
2. Survey (Electronic Cadastre Transactions) Regulations, 2020;
3. Stamp Duty (Valuation) Regulations, 2020;
4. Stamp Duty (Amendment) Regulations, 2020;
5. Land (Amendment) Regulations, 2020;
6. Land (Extension and Renewal of Leases) (Amendment) Rules, 2020;
7. The Land (Allocation of Public Land) (Amendment) Regulations, 2020; and
8. Physical and Land Use Planning (Electronic Development Control and Enforcement System) Regulations, 2020.

The Statutory Instruments and Regulations overly seek to achieve minor technical changes aimed at enabling land registration and administration processes to be undertaken electronically.

The automation of land records is intended to be given effect through the digitalized platform called the National Land Information System (NLIS), which shall facilitate online uploading of data from the line departments including survey, valuation, registration, physical planning, land administration, adjudication and settlement. The system will also be linked to the company's registry and the Registrar of persons to enable smooth facilitation of services.

Objectives and purpose of the proposed Statutory Instruments and Regulations

The overall objectives and purpose of the Electronic Land Transaction Regulations is to:

1. Establish a digital NLIS to provide an efficient and effective land administration system;
2. Leverage on ICT to improve the way in which information is structured, stored, managed, delivered and used;
3. Improve the ease of doing business by cutting time for property registration;
4. Provide the legislative framework and a platform for facilitating cost effective and reliable paperless transactions in land and accessing land information in a timely manner;

5. Establish an electronic payment system to improve revenue collection by eliminating revenue leakages;
6. Reduce paper work and records that takes up lot of space and difficult to access, retrieve and store; and
7. Promote public confidence in the integrity and reliability of electronic records and electronic transactions.

Salient features of all the proposed Statutory Instruments and Regulations

The proposed Statutory Instruments and Regulations have the following features:

8. The Chief Land Registrar is to maintain an electronic land registry;
9. They will apply to all registries gradually, beginning with the Nairobi Registry at first and the Registrar is to issue notices, certificates and other documents electronically and also certify and transmit documents through the electronic system;
10. The electronic system is to provide online links with relevant authorities for ease of information cross-referencing, enable integration for property searches, cadastre outlay and property survey;
11. They require cadastral maps to be kept in electronic form;
12. Authorized users (both individuals and legal persons) will be required to register their particulars in the system and open user accounts and bear certain responsibilities. Provision is also made for professionals, such as lawyers, acting on behalf of clients;
13. The Chief Land Registrar has the power to suspend or terminate a user's access in the system and there will be an inter-institutional appeals committee to determine disputes arising from Chief Land Registrar's decisions;
14. Electronic searches will be enabled for both current and historical searches;
15. They introduce electronic pre-registration processes through filling of e-forms, e-signatures, uploading supporting documents, e-valuation and e-payment;
16. The Regulations introduce e-registration of documents and electronic Certificate of Titles or Leases, to be issued through the system and downloaded by the user;
17. The Director of Survey is to also maintain an Electronic Cadastre to be part of NLIS and the

Director of Survey has power to issue an electronic notice, certificate, instrument or document;

18. All survey plans, field notes, computations and other survey data are to be executed and transmitted electronically;
19. Applications for valuation are to be made electronically in the prescribed form/ application and to be acknowledged and assigned a tracking number. The Chief Government Valuer is required to maintain an Electronic Valuation System (EVS) capable of electronic submission and storage of documents, monitoring the progress of the valuation processes and management of electronic communication;
20. The submission of an executed instrument for purposes of the Stamp duty Act is also to be done electronically as an alternative to manual submission;
21. All the prescribed forms may be modified to enable electronic lodging and an inventory of land based natural resources is to be kept electronically;
22. Payment of land rent is to be coordinated electronically; and
23. Applications for change of user, consent to transfer, lease or sublease are to be done electronically including applications for extension and renewal of Leases.

What it means to the various stakeholders dealing with land

The automation of land records will be given effect through the digitalized National Land Information System (NLIS) and this shifts away from tedious manual handling of land records. It is envisaged that the digitization will result in much anticipated efficiencies and effectiveness by eliminating the need for more physical space to store records. In addition, as land records will be integrated into a single database capable of serving different interfaced offices and institutions, it will now be possible to access records held in different registries.

Finally, it is envisaged that the single database will translate into reduced turnaround times for conveyancing transactions and thereby rank Kenya a few notches higher in the ease of doing business.

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