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### REGISTERING PROPERTIES IN NIGERIA: A CASE FOR STREAMLINING THE PROCESS

The ease with which title to real properties is perfected enhances the property rights enjoyed by private persons as well as corporates in any country. Land acquisition and security of title and interest in land (as guaranteed by perfection of title), is fundamental to the harnessing of investments, expansion of businesses and the growth of economies.

In recognition of the importance of security of interest and title to land to foreign direct investments, the World Bank, last year, included “**registering property**” as one of the new indices used in its annual *Doing Business* report. Hitherto, these indices were limited to: (i) starting a business; (ii) dealing with construction permits; (iii) getting credit; (iv) protecting minority investors; (v) paying taxes; (vi) getting electricity; (vii) trading across borders; (viii) enforcing contracts; and (ix) resolving insolvency.

In the 2016 *Doing Business Report*, published by the World Bank and tagged “Measuring Regulatory Quality and Efficiency”; Nigeria is ranked 185th out of 189 countries rated globally with respect to the “**Ease of Registering Properties**”. Although Nigeria ranks 169th in the overall Ease of Doing Business Index, it is clearly a disincentive, to prospective investors interested in land acquisition deals (and/or investors who are willing to provide debt capital) when faced with the seemingly daunting regulatory issues as well as the high cost of registration connected with registering title to property or creating security over landed property; more so in the light of the World Bank ranking.

To help with a better appreciation of the legal and regulatory maze bemoaning land matters in Nigeria, this article will expatiate on the process of perfecting title to land in Nigeria, especially as it obtains in Lagos State, with some mention of other States and the Federal Capital Territory. This article will also analyze the challenges encountered in registering properties and creating security over land.

### **CRUCIAL FOR CAPITAL FORMATION**

*“In our basic economics, land is a very important asset to capital formation... you can’t start a bank, you can’t start a business, you can’t farm; you can’t even extract crude oil without identifying a particular piece of land or oil well (embedded in land). So it’s the basics of capital formation, it’s the basics of prosperity; it’s the basics of economic well-being and the basics for job,”* said Babatunde Fashola, the erstwhile governor of Lagos State, at the signing into law in January 2015 of a Bill to consolidate all land-related laws in the State.

As a valuable investment vehicle and collateral for obtaining credit, property is a catalyst for growth. However, property-backed investments and transactions (such as leases, mortgages, and assignments) can only be properly and securely concluded, where the relevant property transaction is appropriately registered in a depository, usually called the “lands registry”, for ease of verification. Indeed, countries where property registrations are governed by investment-friendly and seamless legal and regulatory frameworks enjoy favourable perception from investors globally.



## LEGAL AND REGULATORY FRAMEWORKS

### Leasehold Interest in Land and the Right of Occupancy

Generally, in Nigeria, the Land Use Act (Cap. L5, Laws of the Federation of Nigeria 2004) (“the LUA”) governs the ownership and use of, as well as the general administration of land, in Nigeria.

Whilst Section 1 of the LUA vests all land within the urban territory of each State (with the exception of land vested in the Federal Government or any Agency of the Federal Government) solely in the Governor of the relevant State, Section 2 of the LUA vests land within the rural territory of a State in the Local Governments. For clarity, the vesting of the land in the Governor of a State does not in any way confer actual ownership of the land on the Governor.

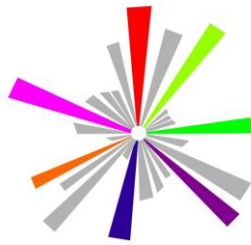
Specifically, the responsibility of the Governor in this regard is to hold land in trust for the common use and benefit of all Nigerians and to this end, administer same for their benefit. Such administration of land are, in the main limited to the allocation of these plots of land to individuals and organisations for residential, agricultural, commercial and other purposes as well as collecting rents in relation thereto.

With the enactment of the LUA, individuals or companies are entitled to only *leasehold* interests (as *Freeholds* were abolished by the LUA coming into force), and these leasehold interests are embodied by “Rights of Occupancy”, which may be customary rights of occupancy or statutory rights of occupancy. Individual rights to land are indeed preserved in the nature of rights of occupancy.

The interest created by a right of occupancy is devoid of absolute ownership or radical title. The Supreme Court of Nigeria, in 1991, in the case of ***Osho Vs. Foreign Finance Corporation***, described the nature of the interest created by a right of occupancy in the following terms: “*The interest of a lessee in land is not exactly the same as that of a holder of a right of occupancy. A holder of a right of occupancy enjoys a larger interest than a holder of lease although the two interests enjoy a common denominator which is a term of years*”. A right of occupancy under the Act can therefore be said to be a right to use and occupy land subject to conditions and restrictions prescribed by law.

The Governor of a State is empowered to grant statutory rights of occupancy to any person in respect of land, whether or not in an urban area and these rights are evidenced by the issuance of certificates of occupancy (“C of O”). The LUA also empowers Local Governments to grant customary rights of occupancy over land in *non-urban areas only*.

Notably, persons who were vested with title to land before the commencement of the LUA are regarded under sections 34 – 36 as ‘deemed grantees’ of Rights of Occupancy with respect to the relevant land and were therefore, entitled to be issued the “C of O” upon application to the relevant government



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ministry or agency. Any subsequent transactions in respect of the land (which is the subject of the Right of Occupancy), must be with the consent of the Governor of the State where the land is situate.

A right of occupancy is granted for a fixed term of years. The convention is to grant a right of occupancy for a maximum term of ninety nine (99) years where the application is for residential uses. Terms ranging from thirty-five (35) to seventy (70) years are typically granted where the land is sought for other (commercial) uses.

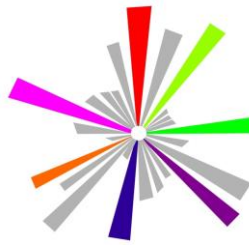
The question of whether there would be a renewal after expiration of the term, and on what terms such a renewal would be granted, is one on which there is as yet no definite answer. Academic opinions on this issue are polarised.

The grant of a right of occupancy is subject to certain conditions, which are spelled out in the certificate of occupancy and the holding of this right is not absolute. Indeed, Section 28(1) of the Act empowers the Governor of a State to revoke any right of occupancy granted to any person. Specifically, in the case of statutory rights of occupancy, a breach of the express or implied terms and conditions of the C of O is also a valid ground for revoking the right of occupancy.

Without prejudice to the terms and conditions specified in the C of O, the primary ground on which a right of occupancy can be validly revoked is to satisfy an overriding public interest. "Overriding public interest" with regards to a statutory right of occupancy, is defined to include "*unlawful alienation, requirement of the land by the Local, State or Federal Government for public purposes, and the requirement of the land for mining purpose or oil pipelines or any purpose connected therewith. The same applies to customary rights of occupancy, save for the addition of the requirement of the land for extraction of building materials*". Section 51 of the Act further defines "public purposes" to mean, among other things, purposes:

- (i) *for exclusive Government use or for general public use;*
- (ii) *for obtaining control over land contiguous to any part or over land the value of which will be enhanced by the construction of any railway, road or other public work or convenience about to be undertaken or provided by the Government;*
- (iii) *for obtaining control over land required for or in connection with planned urban or rural development or settlement; and*
- (iv) *for obtaining control over land required for or in connection with economic, industrial or agricultural development.*

From the foregoing, any purported revocation by the Governor for public interest or purpose must fall within the ambit of the above definitions.



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More importantly, a notice of revocation, (which signifies the Government's intention to acquire property that is subject of a Right of Occupancy), must be issued and served personally on the holder of the right of occupancy, which said notice must be under the hand of a public officer who is duly authorized for that purpose by the Governor. The notice of revocation must also state in clear terms the reason for the revocation, which must be within the statutory permissible grounds for revocation. Any revocation for purposes other than the one prescribed, though ostensibly for purposes prescribed by the Act, would be declared void by a court of law.

Where a right of occupancy is revoked for overriding public interest, the holder of the revoked right is entitled to compensation as specified in Section 29 of the LUA. However, the compensation shall be for the value of the holder's unexhausted improvements, at the date of revocation. Where there is any dispute as to the amount of compensation payable, it may be referred to either the Land Use and Allocation Committee, (which is a body established under Section 2(2) of the Land Use Act to, among other things, advise the Governor on any matter connected with the resettlement of persons affected by the revocation of rights of occupancy on the ground of overriding public interest); or the courts of law. In **Kanada Vs. Governor of Kaduna State**, Section 47 of the Land Use Act, which purports to oust the jurisdiction of courts to inquire into any question concerning the amount or adequacy of any compensation paid under the Act, was declared unconstitutional and void.

### Restrictions on Transfer or Alienation of Land

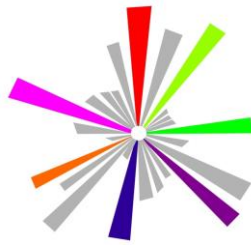
By the provisions of sections 21 and 22 of the LUA, *no transactions* affecting land in Nigeria either by way of assignment, mortgage, transfer of possession, sublease or *otherwise howsoever*, shall be carried out without first obtaining the Consent of the Governor of the concerned State. Any transaction done, or any instrument which *purports* to confer on, or vest *any interest or right* over land in any person in contravention of these provisions; is null and void according to section 26 of the LUA.

However, in **Awojugbagbe Light Ind. Ltd. Vs. P. N. Chinukwe & Anor [1995] 5 NWLR [Pt.390] 409**, the Supreme Court held that a transaction concluded without obtaining the requisite Governor's Consent is not void but merely "*inchoate*".

### Statutory requirements in the States

All States of the federation have their respective land registration laws, which, in addition to the LUA, govern the administration of real property transactions in the relevant State.

Perfection of title involves three main stages; to wit: (1) obtaining Governor's Consent; (2) stamping the relevant transaction document; and (3) registration of the transaction document at the relevant Lands Registry.



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Specifically in Lagos State, the registration of title to land is governed by the **Lagos State Lands Registration Law, 2015** (the “Lagos Lands Law”). Salient provisions of the Lagos Lands Law include:

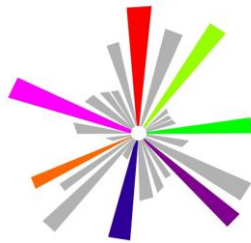
- The mode of transfer of interests in land, sub-lease or mortgage must be by deed. Such transfers shall be deemed to be complete only after the deeds have been registered at the Lands Registry – Section 62(1);
- All deeds by which sub-leases, mortgages and dealings in land are effected are registrable documents – Section 74(1);
- Registrable documents are mandated to be registered within sixty (60) days after obtaining the Governor’s Consent – Section 26(1);
- A Power of Attorney (POA) authorising a third party to deal in land is a registrable document – Section 56(2);
- Land Certificates shall be issued, containing the details of all transactions relating to land, which have been registered as required –and the Land Certificates shall be prima facie evidence of title – Sections 35(1) and 35(5);

A registered holder of title to land has power to dispose or deal with it and create any interest or right over it, subject to obtaining the required Governor’s Consent – Section 32.

Due to the requirement of obtaining Governor’s Consent in relation to any alienation of land, registering properties in Nigeria has become a cumbersome and long process, and obtaining the Governor’s consent could take between 6 months to several years, depending on the level of bureaucratic procedures in the relevant State. Apart from the cumbersome process, the costs associated with the perfection of title is another challenge prospective investors consistently battle with, as these costs could be as high as 15% of the value of the property. In Lagos, the immediate past Governor reduced requisite perfection costs to about 3% in January of 2015 and this has helped with the increase with compliance with the LUA and investments in real properties.

In Lagos State, there are about seven stages involved in the perfection process and these are as follows:

1. Submission of an application for Governor’s Consent at the Lands Bureau. This application must be accompanied by relevant documents and evidence of payment of preliminary levies such as Application Fee, Charting Fee, Endorsement Fee and Administrative Charges, as prescribed by the Lands Bureau.



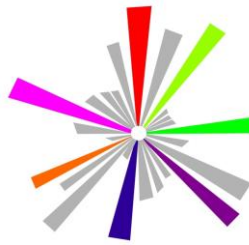
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2. The application is referred to the office of the Surveyor General of Lagos State for the purposes of: (a) charting the relevant survey plan; (b) ascertaining that the land is free from government acquisition; and (c) ascertaining that the coordinates of the land as reflected in the relevant original survey, do not fall outside the vendor's property.
3. Thereafter the application is returned to the Lands Bureau and an assessment letter is issued requesting the applicant to make the following payments:
  - (i) Consent Fee;
  - (ii) Stamp Duty;
  - (iii) Capital Gains Tax;
  - (iv) Registration Fee;
  - (v) Business Premises Charge (payable if the property is a business premises or if one of the parties is a company);
  - (vi) Direct Assessment (personal income tax of parties to the transaction); and
  - (vii) Neighbourhood Improvement Charge, (where applicable).
4. Payment receipts obtained in respect of the payments mentioned under (3) above, are then forwarded to the Lands Bureau.
5. The Deed is forwarded to any of the designated commissioners for the endorsement of the relevant portion of the Deed on behalf of the Governor, evincing the requisite Governor's Consent to the transaction.
6. Subsequently, the Deed is stamped by the Lagos State Internal Revenue Service (where parties are individuals) or the Federal Inland Revenue Service (where one of the parties is a company).

It is instructive to know that by virtue of section 22(4) of the Stamp Duties Act (Cap. S8, Laws of the Federation of Nigeria 2004), every instrument relating to any property situate in Nigeria must be duly stamped (following payment of appropriate duties). Without stamping, such instrument will not be acceptable for registration at the Lands Registry and will also be inadmissible in evidence in any court proceedings.
7. Following stamping, the Deed is presented to the Lagos State Lands Registry, for registration. Registration signifies the completion of the perfection process and a duly perfected original Deed (together with one counterpart Deed) is returned to the applicant.

### Regulatory reform

Although the process outlined above appears relatively easy, the bureaucracy that often attends applications for perfection of title makes the process tedious and cumbersome.



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More instructively, it is important to note that stakeholders in the real property sector have attributed Nigeria's poor showing in property transactions to "obsolete laws, weak governance framework, fragmented regulatory structures and administrative malpractices". In the global real property markets, the seamless processes of property registration are ensured through streamlined rules and minimal costs.

Indeed, data reveals that it takes an average of three days only for buyers to perfect titles to their landed properties in Dubai with a near zero cost. Available data on jurisdictions such as Thailand, South Africa, United Kingdom, and the United States suggests timelines for registration and associated costs as follows:

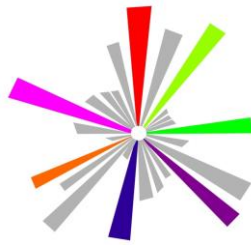
- Thailand - 1 day and 1% cost;
- South Africa - 2 months and 3% maximum cost;
- United Kingdom - 2 months and 4% maximum cost; and
- United States - 2 months and \$8,000 maximum cost.

Thus, in a bid to streamline the perfection process and reduce the time expended on perfection in Lagos State, the Fashola-led administration attempted some major reform of the process.

In furtherance of this reform, the Directorate of Land Services in Lagos State, issued a guideline referred to as "*The 30-Day Governor's Consent to Subsequent Transaction of Land*". The guidelines actually regulate more than the procedure for obtaining Governor's Consent, and do regulate the entire perfection process including registration and collection of registered documents.

The 30-Day guidelines lay down a 10-step procedure with specific timelines for completion of each step/activity. The 10-step procedure, with attendant timelines, is as follows:

- (i) Receipt of applications and accompanying documents at the reception desk;
- (ii) Unique referencing of applications for identification purpose; (Steps I & II are to be completed in One (1) day).
- (iii) Investigation of the status of the land through charting - (This must be completed within Four (4) to Seven (7) days)
- (iv) Assessment of property to determine applicable fees
- (v) Issuance of Demand Notices (Steps IV & V are to be completed in One (1) to Two (2) days)
- (vi) Forwarding of treasury receipts of payments of fees by applicants - (This must be completed within Five (5) to Seven (7) days)



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- (vii) Approval and endorsement of documents by the Honourable Commissioner (This must be completed within Four (4) to Seven (7) days)
- (viii) Stamping of Documents (This must be completed within Two (2) to Three (3) days)
- (ix) Registration of Documents (This must be completed within Two (2) to Three (3) days)
- (x) Collection of all registered Documents

However, in practice, these 30-Day guidelines are not being adhered to by officials involved in the perfection process in Lagos State. For this reason, the old regime (which is slow, inhibitive, and discouraging to business transactions), which existed before the issuance of the guideline has since resurfaced.

### CONCLUSIONS

Undoubtedly, the negative effects of the complex and overburdened property perfection procedures on the economy are clearly shown, by Nigeria's low competitiveness and poor *Doing Business* ranking.

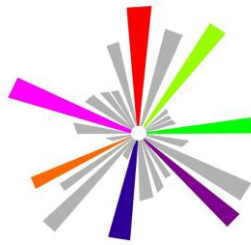
As Africa's biggest economy with about \$510 billion Gross Domestic Product (GDP) figures, Nigeria has the potential of becoming one of the world's real estate hubs. But the inhibiting practices slowing the pace of perfection of title to properties have continued to affect adversely, the contribution of the real property sector, to the growth of the overall economy.

For instance, mortgage contribution to the GDP in Nigeria is a negligible 0.12% and this is because most people fail to comply, given the enormity of the costs associated with registering security over landed property. The costs of registering security over land in Lagos state for instance is about 2.2% of the mortgage value (to get the Deed of Legal Mortgage properly registered both at the Lands Registry and the Corporate Affairs Commission). By comparison, mortgage contributions to the economies of the US, Britain, Germany, Thailand, South Africa and Ghana are respectively; 63%, 64%, 55%, 15%, 20% and 3%. Clearly, since the costs of perfecting mortgages in those jurisdictions are relatively small, that drives compliance with the laws and regulations governing alienation of property rights related to land.

In our opinion, there is need to reform the various land registration laws across the States of the federation and streamline the rules. In this connection, the Lagos State model is commended. There is also the need to review downward some of the onerous rates and fees payable on land registration as well as the time lag for completing the processes in all the States.

Most importantly, there cannot be any real and quantifiable reform unless and until strict adherence to the streamlined is enforced and stiff sanctions laid down for none compliance. In the absence of firm





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and driven implementation and compliance, the new laws, regulations and guidelines only become ineffective documents and the reforms eventually fail to achieve the desired effect of improving our global ranking under the “Doing Business” parameters and our economy doesn’t get the desired boost which it desperately requires.

*The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo*

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