

AUGUST 2005 LEGAL ALERT: NEW AMENDED PROCEDURES FOR LAND TRANSFERS IN LAGOS STATE.

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REACTIONS TO LAST LEGAL ALERT ? Ethics for Arbitrators.

More responses were received to our last Legal Alert from in-house Solicitors who were finding litigation procedures exceedingly frustrating, time consuming and uneconomical. We are of the view that further modern advancements in the economy and enlightenment of retained Solicitors to the immense benefits of alternative dispute resolution mechanisms like Arbitration, mediation, etc. to them and more especially their clients, hold the key to the future successes of most businesses.

Some respondents also mentioned that the font of our Legal Alerts appeared small on their computers. This could possibly be from the size or performance of their computer screens. We have however now increased the font; in the event that this persists, please inform us. You can also visit our web site for this and all the previous Legal Alerts.

LEGAL & BUSINESS NEWS.

(i) Pencom grants PFCs Approvals-in-principle.

The National Pensions Commission has announced the Approval-in-principle of the applications of four (4) Pension Fund Custodians (PFCs). The intending PFCs are UBA Custodian Services Limited, Diamond Custodian Services Limited, Zenith Pensions Limited and First Custodian Limited.

The above Approval-in-principle are valid for ninety (90) days; within these number of days, the intending PFCs are required to comply with further requirements as contained in the Pension Act to entitle them obtain the licenses to operate as PFCs and other requirements and guidelines provided by Pencom.

(ii) Reforms to Tax Legislations.

The long awaited need to improve our archaic tax laws is receiving attention at the National Assembly in the form of amendments to the existing Tax Laws. Some of the awaited reforms

include:

(a) A consolidation of the entire emoluments of all employees in Nigeria. It is expected that only sixty percent (60%) of the total emoluments will be taxed whilst the balance Forty Percent (40%) will be tax free. This is primarily to encourage voluntary compliance especially from people in the private sector.

(b) Elimination of multiple taxes like education tax, sugar levy, automotive levy, etc.

(c) Financial autonomy for the Federal Board of Inland Revenue (FBIR). It is proposed that about 3% of the taxes collected excluding petroleum tax should be used by FBIR in tax administration services.

(d) Special tax relief for corporations that make financial contributions to tertiary institutions in Nigeria.

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INTRODUCTION.

Acquisition and retaining title to land all over the world have always been a very contentious matter which sometime results to violence. In Nigeria, prior to 1978, all land belonged to the communities in which the land is situated. This practise resulted in a lot of fraud, corruption and nepotism by the land owners who were usually represented by the elders of the communities who held the land in trust for the people. The Nigerian Military Government at the time therefore promulgated the Lands Use Act, 1978 (the Land Use Law) to remedy some of these hardships in the old land ownership system.

A major provision of the Land Use Law is that all land in the urban area are held in trust for the entire people of that State by the Governor of that State whilst land in rural areas are held in trust for the entire community by the head of the Local Government Area where the land is situated. Land that had been transferred or sold before the 1978 Law are still recognised under the subsisting Land Use Law.

A second major provision of the Land Use Law is the requirement that any transfer of any interest in any land whether by assignment, mortgage, transfer of possession, long sublease or otherwise would only be recognised in Law if the prior consent of the Governor of the State or the Head of the Local Government ? depending on whether the land is State or Local government land - is sought and such prior consent is obtained.

Unfortunately, the requirements for Governor's Consent before transfers of interest in land are recognised have become very cumbersome and laborious with a lot of bureaucratic hurdles. The Lagos State Government (LASG) in appreciation of this problem has introduced new procedures

to fast track the application and grant of Governor's consent within the shortest time possible.

We attempt to highlight these changes for your convenience.

MAJOR CHANGES TO OBTAINING GOVERNOR'S CONSENT.

1. There is now a reduction in the overall fees paid by an Applicant when applying for Governor's consent to a land transfer. The reduction is from 30% to 15% of the amount determined by the Government to be the capital value of the land. This fee is now required to be paid upfront at the time of making the application.

A breakdown of the 15% is as follows: -

(i) Consent fee ? 8%;

(ii) Capital Gains tax ? 2%;

(iii) Stamp duty ? 2%;

(iv) Registration fee - 3%;

For mortgage transactions, the percentage of fees payment for consent have also been reduced from 0.25% to 0.20%

2. All applications are expected to be concluded within a maximum period of thirty (30) working days from the date of the submission of the application, the payment of all fees accessed and satisfactory answer to any query raised to the accompanying registration papers.

3. A Tax Desk has been created at the Directorate of land services for accessing and verifying an Applicant's tax liability.

4. The appointment of additional Council Commissioners, in addition to the Honourable Attorney General and Commissioner for Justice, to endorse on behalf of the Governor of Lagos State, land applications for Governor's Consent.

5. On the endorsement of an application by the designated Commissioner, the Directorate of Land Services is now responsible for sending the endorsed Agreements to the Stamp Duties Office for stamping and subsequently to the Land Registry for registration. It is only on the registration of the land Agreements that appropriate copies of the document are given to the Applicant as confirmation that the Governor has granted his consent to the application for transfer of interest in the land.

NEW CHECKLIST GUIDELINES/REQUIREMENTS FOR OBTAINING GOVERNOR'S CONSENT.

I. A duly completed and signed application made on land Form 1c to be sworn before a Notary public or a Magistrate.

II. A covering application letter by the Agent or by the Attorney to the Applicant. Contained in the letter must also be the address, telephone numbers, mobile numbers and where possible an

email address of the Applicant.

III. A certified true copy of the original title to the land.

IV. A bank certified Cheque made payable to the Lagos State Government. The exact percentage is dependant on the nature of the transfer, e.g. 5% for deeds of gifts or special transactions, 8% where the State Right of Occupancy has existed for 10 years or more, 16% where the right of occupancy is less than 10 years of the capital value of the land, etc.

V. Bank certified Cheque of N10,500 (Ten Thousand Five Hundred Naira) made payable to LAGS representing Charting fee, Endorsement fee and Form 1c.

VI. One Hundred Naira (N100) as Development levy for each party to the Application.

VII. Genuine current tax clearance certificates of the parties. For mortgage applications, only the tax clearance certificate of the mortgagor is required.

VIII. Where one of the parties is a limited liability company, the Pay-As-You-Earn (PAYE) receipts for its staff and the current Tax Clearance Certificates of at least two of its Director's.

IX. Evidence of payment of Ground rent and land charges where the application relates to State land or is covered by a Certificate of Occupancy.

X. An Affidavit in lieu of Tenement rate where the land is an undeveloped land.

XI. Four (4) copies of the Deed of Assignment or Power of Attorney or Sub-Lease or Deed of Mortgage ? as is applicable ? are now required to be submitted instead of six copies.

THE NEW PROCEDURES ON THE STAGES AND TIME FRAME FOR OBTAINING GOVERNOR'S CONSENT TO LAND TRANSFERS.

1. Submission/Opening of Application - 1 day.

2. Reference to Survey Directorate for charting - 4 days.

3. Processing of application

(Inspection where necessary)

and Issuance of Demand Notice - 3 days.

4. Assessment of Tax liability by Tax Desk - 3 days.

5. Obtaining Treasury Receipts from the Banks - 4 days.

6. Processing and forwarding Applications

by Director of Land Services to the

Permanent Secretary (Land Bureau) - 5 days

7. Forwarding of Applications by Permanent

Secretary (Lands) to the Hon. Commiss - 3 days

8. Endorsement of Applications by the Hon.

Commissioner and return of files to

Directorate of Land Services and release
of endorsed Deed. - 6 days

Total number of days = 30 DAYS

CONCLUSION.

Firstly, the success or otherwise of this new initiative is subject to the willingness of both government officials and all other stakeholders, particularly the former, to adapt mentally and physically to these changes in procedure.

Secondly, the Land Use Law itself is ripe for review especially after many years of criticisms of its provisions.

Thirdly and equally importantly ? pending the review of the Land Use Law by the Federal legislature - are the problems resulting from the adoption of the Land Use Law itself; most tribal communities especially in the Niger Delta were not paid adequate compensation at the time the Land Use Law came into force. These communities believe till present date that the Land Use Law came into existence to give the Federal Government excessive powers over all natural resources located on their land. It is possible that the payment of a percentage of the fees collected by Government to these communities may ameliorate their grievances pending a review in this Law. Also, the payment of some form of royalty to the communities would assist the present unrest.

MOTIVATIONAL QUOTE.

Our Motivational Quote for this month is from one of our Partners, Ehijeagbon Oserogho, and it is that - Businesses that are MANAGED as a hobby are bound to fail.

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