

ARTICLE:

IMPLEMENTATION OF PUBLIC E-SERVICES FOR IMMOVABLE PROPERTY CONTRACTS IN LITHUANIA

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This article analyses the mode of implementation of public electronic services with respect to immovable property contracts (PESIPC) between the Lithuanian State Enterprise (SE) “Centre of Registers” (Centre of Registers) and the notaries, including the legal aspects relating to such contracts. The PESIPC information system in Lithuania has been created with the purpose of simplifying procedures for the conclusion and registration of the property contract, namely by renouncing the need for the appearance of the interested parties in person at the premises of the Centre of Registers, because all contracting procedures can be completed in the notary’s office. The official information on the registry and cadastre of immovable property, which is required for concluding and verifying a contract, is delivered directly to notaries and interested parties through the internet. Both the preparation of contract documents and the registration of changes relating to legal facts, as well as the contracts in the register of immovable property, are planned to be computerized. This is one of the first PESIPC systems in Europe; thus, it is vital to research the legal aspects related with the operation of such an information system.

Introduction

During the last three years more, than 600,000 immovable property contracts have been concluded in

Lithuania, amongst which around 25,000 were signed in the year 2003. Nearly 85 per cent of all the contracts were concluded between private persons, and the rest pertain to legal entities. According to this statistical data, there is a definite need for public services of immovable property contracts. All the parties concerned with immovable property issues (owners, notaries and such like) are interested in developing immovable property electronic services.

Lithuania is currently developing the information systems of public e-services by way of immovable property contracts (PESIPC). This system will create a suitable virtual environment that could eliminate the circulation of written documents between the Centre of Registers and the notaries. It will also ensure the reliability of information, that is, minimize both the quantity of illegal contracts and probability of errors. The notaries and the Centre of Registers are directly interested in this issue, as they are financially responsible for the legality and equity of legal data and formation of contracts.

The PESIPC system is one of several information systems that are currently in operation in a number of countries. For instance, the information system operating in the immovable property registry of the Netherlands still requires the use of written documents.¹ In this case, both electronic documents and written documents are transferred to the register, and the written documents are stored in the archives. In Austria, the electronic archive of deeds is used.² Since the year 2000, all deeds in Austria are stored in an electronic archive.³ Furthermore, in the USA, notaries are now using various types of technology, such as Electronic

¹ Land Registry Office of Netherlands <http://www.kadaster.nl>.

² Friedrich Schwank ‘CyberDOC and e-Government:

the electronic archive of Austrian notaries’ e-Signature Law Journal, Volume 1 Number 1, 2004, 28 – 30.

³ Electronic Document Archive of Austrian Civil Law Notaries <http://www.notar.at/en/portal/einrichtungen/cyberdocgmbhcokg/>.

Notaries should verify the data about the parties to a contract and their immovable property. They complete the search relying upon specific registries stored on the internet.¹³ The information obtained is not automatically transferred to the contract documents that are usually drawn up in the MS Word environment; therefore, the probability of errors is conceivable. Notaries must notify the Centre of Registers on the subject of the contracts made, by means of a specific notification system. In conclusion, the notaries employ a range of different tools for the verification and conclusion of immovable property contracts, and these tools are insufficiently integrated.

Notaries do not provide any services to owners in relation with the real rights, legal facts or registration of restrictions at the Centre of Registers. In such a way, an owner should submit all the necessary documents and payment to the Centre of Registers for its services.

Purpose of the PESIPC, its basic objectives and tasks

The purpose of the PESIPC is to simplify procedures relating to the conclusion of the contract and the registration, namely by renouncing the need for appearance of the interested parties in person at the premises of the Centre of Registers, as all contracting procedures could be completed in the notary's office. Due to the forms of information technology now available, it is intended to withdraw the procedure of issuing paper certificates so that the document (certificate) in electronic format could be sent directly to the notary, who would, then, conclude and verify a proper immovable property contract. In this way, all the information concerning the immovable property shall be obtained automatically from the registry.

The main objective of the prospective information system is the replacement of the conclusion of immovable property contracts in written format with an electronic form, insofar as it is possible, to ensure it valid under the legal provisions of the Republic of Lithuania. All parties to a contract could make a direct use of the official information stored in the immovable property registry and cadastre, as well as in the other national registries.

The public electronic services for concluding immovable property contracts are under way with the purpose of computerizing all the required procedures:

all parties to a contract would interact with the notary (a principle of "one-stop-shop"), all contract documents would originate and be stored in electronic format, and parties to a contract would pay for their services to the notaries who, in turn, would settle payments with the Centre of Registers. The correct information would be accessible in the PESIPC system, which is a basis for an integral environment. The documents would never escape from the system; thus, enabling to record and trace back their complete history, such as who, what and when any changes to a document were made.

There are some issues that need to be considered before the implementation of the PESIPC system. For instance, the registration and authorization of users, administration of user rights, verification of authority of private persons and legal entities (or their representatives) and verification of authority according to data available in the Register of Residents and Register of Legal Persons, registration and provision of contractual information, transfer of the results of the contracting procedure to the Centre of Registers, and the formation of electronic documents on the basis of the above-mentioned data, including the diagrammatical information on land plots and buildings (this information is stored in the database of immovable property cadastre and the electronic documentation archive of the Centre of Registers), development of the electronic signature infrastructure, establishment of archives for the notaries, presentation of information on fees and the management of payments.

The PESIPC system would be different from other information systems that are currently in operation in several EU countries. For instance, the electronic system of the immovable property registry in the Netherlands still makes use of written documents.¹⁴ In this case, both electronic documents and paper documents are transferred to the register, and the paper documents are stored in the archives. In Austria, the electronic archive of deeds is used.¹⁵ Since the year 2000, all deeds in Austria are stored in an electronic archive.¹⁶ Meanwhile, the exceptional feature of the information system to be implemented in Lithuania is the possibility of having a fully computerized registration of rights to immovable property.

Computerized object

The PESIPC information system is to be developed with

¹³ Information for the notary in the website of the Centre of Registers of the Republic of Lithuania https://www.registrucentras.lt/login.php?ret_page=/ntr/notarai/index.php.

¹⁴ Land Registry Office of Netherlands

<http://www.kadaster.nl>.
¹⁵ CyberDOC and e-Government: Electronic archive of Austrian notaries available on-line at <http://beta.austlii.edu.au/au/other/CompLRes/2003/47.html> viewed on 17 August 2006.

¹⁶ Electronic Document Archive of Austrian Civil Law Notaries available on-line at <http://www.notar.at/en/portal/einrichtungen/cyberdocgmbhcokg/> viewed on 17 August 2006.

All contract documents are arranged in an electronic format using certain patterns, depending on the stage and type of the contract.

the purpose of eliminating the shortcomings of the procedures of the conclusion and registration of immovable property contracts. Parties to a contract (acquirers and transferors) apply to a notary who is officially authorized by the state, requesting to vouch for the legality of an immovable property contract. The notary makes a direct use of the PESIPC system, as they are the prime user. The acquirers and transferors have to submit all the documents necessary for the contract completion. The notary, after having verified the identity and legal capacity of the parties to the contract, initiates the contracting procedure in the PESIPC environment. All contract documents are arranged in an electronic format using certain patterns, depending on the stage and type of the contract. If deemed necessary, after the completion of a specific stage of the contract, some documents are printed (signed, registered) for the parties to the contract. Simultaneously, these documents are transferred to the Centre of Registers in electronic format. Both parties to the contract (indirectly via notaries), and notaries themselves pay the Centre of Registers for its services. Information on fees is stored and administered in the PESIPC information system.

The key features of the future procedure for the conclusion and registration of immovable property contracts in combination with the services provided by the PESIPC system, are as follows:

- parties to the contract interact only with the notary;
- contracting documents are drawn up in the electronic format using set patterns;
- due to the use of electronic documents and the cooperation between notaries and the Centre of Registers, the use of paper documents is no longer necessary;
- electronic documents never leave the PESIPC information system; therefore, security is ensured and no unauthorized person could make any alternations in contracting documents;

- the electronic format of documents minimizes the probability of mistakes, as most of the data may be automatically obtained from correspondent registries, and the newly introduced data may be compared with the information stored in the registries. In addition, notaries provide a new service which is the handling of applications for registration of the real rights to immovable property, limitations of these rights or legal facts;
- private persons pay notaries for their services, and the notaries administer these payments being fully accountable for charging parties to a contract;
- in turn, the notaries must settle payments to the Centre of Registers on the basis of the information stored in the PESIPC information system.

Legal aspects related with the PESIPC information system

Conclusion of immovable property contracts

Article 1.74 of the Civil Code of the Republic of Lithuania states that any contracts of disposal (ownership transfer) or restriction of the real rights to immovable property must be concluded in a notarial form.¹⁷ In this case, a contract must be concluded in a written form, and the notary verifies the fact of the conclusion: the notary then makes appropriate notes in the document, introduces a record concerning the contract in the registration book, and retains one copy of the document. Before making an office-copy, the notary must verify the identity of the parties to the contract, ascertain their actual objectives and explain the consequences of the conclusion of the contract.¹⁸ One should bear in mind that documents in electronic form are not equated to the notarial form of the contract.¹⁹

It is also important to note that in several foreign countries the verification of the immovable property contracts can be concluded in electronic form, provided the contract itself would be concluded electronically. For

¹⁷ *Civil Code of the Republic of Lithuania, available on-line at <http://www.lrs.lt>; Art. 174.*

¹⁸ *Commentary of the Civil Code of the Republic of*

Lithuania. – Vilnius: Justitia, 2001, p 170.

¹⁹ *Civil Code of the Republic of Lithuania, available on-line at <http://www.lrs.lt>; Art. 1.73, Part 2.*

example, pursuant to the Electronic Notary Statute of Arizona,²⁰ notary actions can be completed in electronic form. The notary uses a certain electronic note that is attached to a notarial electronic document and constitutes a notarial electronic signature. The initiative of transferring notarial practice to an electronic environment has been observed in other countries, too (e.g. Austria, the Netherlands, France).

It is necessary to keep in mind that the main objective of public electronic services related to contracts concerning immovable property, is to allow the notaries to submit the necessary information to the Centre of Registers electronically. This information is required for the Centre of Registers to register the real rights to immovable property. In this case, the question concerns not the form of the contract or the way it was concluded, but the follow-up procedures after the contract has been concluded, such as the registration of the real rights to a specific immovable property after the conclusion of the contract and transfer of the information which is necessary for this type of registration.

Therefore, it is possible to sum-up, that the establishment and operation of the PESIPC information system will have no influence on the procedures related to the conclusion of a contract. Immovable property contracts shall be concluded in a traditional notarial form and the electronic form would not be applied. Thus, there is no need to revise the provisions of the Civil Code concerning the notarial form applicable to the contract.

Legal value of the information transferred in the course of the procedure of registration of the real rights to immovable property

At present, the registration procedure of the real rights to immovable property includes the circulation (processing) of various written documents, thus ensuring the legal value of the information circulating in the PESIPC system. It is this database that the Centre of Registers would register the real rights to immovable property. One must consider not just the admissibility of this electronic information, but also how to assess the criteria of its adequacy to written documents.

The Law on Electronic Signature dated 11 July 2000 regulates the creation, verification and validity of electronic signatures, rights and obligations of the users of such signatures, requirements for certification

services and providers of certification services, as well as rights and functions of the institution supervising the use of electronic signatures. It is compliant with the EC Directive on a Community framework for electronic signatures (1999/93/EC). Article 8 of the Law on Electronic Signature indicates that an electronic signature as set out in the Law, has the same legal value in relation to electronic data as that of a genuine signature to written documents.²¹ The Law specifies that a signature may not be deemed invalid based on any of the following grounds listed below:

1. it is in the electronic form;
2. it is not based on a qualified certificate;
3. it is not based on a qualified certificate issued by an accredited provider of certification services;
4. it is not created by a secure equipment for the generation of signatures.

In conclusion, the information available in the PESIPC system will have the same legal value as a paper information, provided this electronic information is verified by a safe electronic signature, as set out in the Law on Electronic Signature. The public electronic signature infrastructure will not need to be used, as article 8(3) of the Law states that an electronic signature is legally valid in all cases:

'In all cases, the electronic signature shall have the legal power laid down in paragraph one of this Article, provided that the signature users shall reach an agreement among themselves.'

Thus, electronic signature practices related to the operation of the PESIPC system should correspond to the use of a safe electronic signature of sufficient standards between the notaries and Centre of Registers. For instance, when it comes to issues relating to the submission of information to the court or litigation, the information certified by a safe electronic signature should be considered a testimony.

Identification of the notary

The issue regarding the identification of the notary arises with respect to the PESIPC system, due to the fact that the notary would be working with the data that is in electronic format. It is important that the technology would be in agreement with the criteria

²⁰ *Electronic Notary Statute of Arizona State, available on-line at <http://www.azleg.state.az.us/ars/41/00352.htm> viewed on 20 February 2006.*

²¹ *Law on Electronics Signature available on-line at <http://www.lrs.lt> Art. 8.*

applied for the appropriate electronic signature as set out in the law. Pursuant to the Law on Electronic Signature, the electronic signature means data inserted, attached to or logically associated with other data for the purpose of verifying the authenticity of the latter and (or) identifying the signatory.²² A secure electronic signature means a signature that meets all of the following requirements:

it is uniquely linked to the signatory;

it provides a possibility to identify the signatory;

it has been created with the means that the signatory can manage with his/her own free will;

it is related to the data verified by an e-signature in such a manner that any subsequent changes to the data could be detected.²³

Apparently, the Law establishes and promotes a technologically neutral and unspecified model of the electronic signature that, in principle, encompasses all possible types of authentication and identification of the signatory by means of electronic data. This can include biometric measurements. According to the draft document, the biometric identification technology shall be applied from a technical point of view.

In the case of biometric technology applied to the PESIPC information system, an essential functional element of an electronic signature is the ownership of the electronic signature, which permits the identification of the registered owner. In other words, the data submitted in a certain way (substantial element of an electronic signature) should not be random, but rather serve as means for authentication or identification of a person. To this end, it is crucial that, when establishing the PESIPC information system, attention should be paid to the fact that, from a legal point of view, there should be a possibility to identify all the notaries connected to the PESIPC system based on their electronic signatures.

As the legal basis concerning the use of an electronic signature in Lithuania is in place, no changes related with an electronic signature are required for the establishment of the information system under consideration.

Procedure of registration of the real rights to immovable property

The basic principles relating to the registration of immovable property rights in the registry of immovable property should not be revised (in accordance to the Law on Immovable Property Registry,²⁴ written contracts and other documents would remain the basis for registration). However, the procedure applying to the registration of the real rights to immovable property, restrictions of these rights or legal facts should be modified. A considerable part of this procedure is regulated by article 23 of the Law on Immovable Property Registry. The procedure concerning the submission of certain documents to the registry, as indicated in article 23, is not applicable in those cases where the PESIPC system is operating (article 23 refers to the submission of original documents). When it comes to the establishment of the PESIPC information system, corresponding changes in this article will be necessary. They would enable a person to present an application to register the real rights to immovable property electronically.

After the PESIPC system is established, an acquirer will need to present an application for the registration of property ownership rights. The notary would become the intermediary, who would send a particular application to the registry on behalf of the acquirer. Based on the application and specific information concerning the basis for registration presented by the notary through the PESIPC system, the manager of the registry in the Centre of Registers would register the rights to immovable property and, when needed and through the mediation of the notary, would issue a respective certificate verifying certain rights, which the notary would approve by their stamp. Supposedly, new provisions in the Law on Immovable Property Registry and in the Regulations of the Immovable Property Registry will be required, as current provisions are not relevant when applying the PESIPC information system.

The payment to the notaries for the services provided to them by the Centre of Registers is also an issue for discussions. Article 43 of the Law on Immovable Property Registry indicates that fees and taxes imposed for the use of the data from the immovable property registry shall be fixed by the Government.²⁵ This provision concerns, for instance, the search for information in the registry. When some immovable property is registered, the order for payment is issued in

²² Law on Electronic Signature, Art. 2, Part 4.

²³ Law on Electronic Signature Art. 2, Part 5.

²⁴ Law on Immovable Property Registry, available online at <http://www.lrs.lt>; Art. 15

²⁵ Law on Immovable Property Registry Art. 43.

accordance to the secondary legislation, the Regulations of Immovable Property Registry. Pursuant to point 16.3 of these Regulations, a document certifying the payment for the registration shall be presented together with an application.²⁶ These provisions would be irrelevant when the PESIPC information system is established, as the notaries would receive an assessment valid for a certain period of time. In this case, respective modifications would be necessary in the secondary legislation.

Conclusions

The procedure for the issue of certificates for the transaction of notarial contracts is considerably complicated. The payment for services is also complicated. Notaries do not provide any services to acquirers in relation the real rights, legal facts or registration of restrictions at the Centre of Registers. The PESIPC information system would change the procedure of registration of the rights to immovable property substantially: acquirers and transferors of immovable property would be able to register their rights to immovable property at the notary's office.

The establishment and operation of the PESIPC information system will not influence the procedures of the contract conclusion. Immovable property contracts shall continue to be concluded in a traditional notarial form, and the electronic form of the contract would not apply.

The electronic information stored in the PESIPC system would have the same legal power as a written information on paper, but only where the electronic information is certified by a safe electronic signature, as indicated by the Law on Electronic Signature. Moreover, it is a requirement that any transactions between the notaries and the Centre of Registers should match up to set standards. In this case, for instance, where the issues related with the submission of information to the court or litigation is concerned, the information certified by a safe electronic signature should be considered a testimony.

In order to implement the PESIPC information system, new provisions in the Law on Immovable Property Registry and the Regulations of Immovable Property Registry are necessary, as the current provisions defining the registration procedure of immovable property are not relevant in applying the PESIPC information system.

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²⁶ Regulation on Immovable Property Registry Art 16.3.