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PROGRAMME OF WORK FOR 2010–2011

LAND ADMINISTRATION POLICIES

**GUIDANCE AND GOOD PRACTICE FOR THE APPLICATION OF FEES AND
CHARGES FOR REAL PROPERTY CADASTRE AND REGISTRATION SERVICES**

Note by the secretariat

Summary

During the Working Party on Land Administration's fifth session it was decided that a study of existing practices should be undertaken on fees and charges for cadastre and registration services in the United Nations Economic Commission for Europe (UNECE) region (ECE/HBP/WP.7/2007/10, para. 24 (b)). The present document is based on the outcomes of a questionnaire discussed during the fifth session that surveyed current government practices in the region (ECE/HBP/WP.7/2007/4). This document's objectives are to provide guidance and promote good practice in the application of fees and charges in UNECE member States. It elaborates on the questionnaire's findings on existing knowledge and country experiences by identifying existing trends and principles in financing real property cadastres and registers as well as the factors that influence the setting of fees and charges. The document argues that fees and charges are inextricably linked to cost management and recovery. All these variables are fundamental aspects of the sustainability of land administration in a country.

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INTRODUCTION¹

1. The importance of land and property markets to encourage capital accumulation in the financial sector and promote economic growth has been widely recognized. Property registration and cadastral services are fundamental to the operation of these markets and can be implemented in many different ways. Some might be more efficient than others, but all systems come at a cost. It is crucial to balance the costs against the benefits, and thus the need to apply appropriate fees and charges is of major importance. Fees that are too high, or perceived to be too high, may actively depress a market. Fees that are too low may not recover enough costs to create, maintain or further develop cadastre and registration systems.

2. The Working Party on Land Administration promotes the development and implementation of sound land administration policies, including the administration of land management, the funding and charging of services and activities, and access to land information. In 1996, the UNECE publication *Land administration guidelines* (ECE/HBP/96) identified the factors that should be taken into account when developing legislation, organizations, databases, maps and funding mechanisms required to implement and maintain a solid land administration system, frequently referred to either as a cadastre or a land registration system.

3. Cost management and cost recovery are fundamental aspects of the creation and sustainability of land administration services. Fees and charges are inextricably linked to these variables; they constitute important means by which the operating costs of land administration can be recovered and are also a tool to promote and develop land markets. This holds true in particular in countries with low income levels.

4. Some of the recommendations for establishing or improving land administration systems included the requirements to subsidize the initial creation of land administration system and to fully recover these systems' recurrent operating costs.

5. In 2005, the 1996 guidelines were updated in the publication, *Land administration in the UNECE region: development trends and main principles* (ECE/HBP/140). This report reflected the changes that had taken place since 1996 and acknowledged how several countries have built new land administration systems and faced new challenges in relation to the sustainability of these systems and their maintenance. It describes existing trends towards unified land cadastre and registration systems and operations "partly or fully based on the principles of cost recovery" (ECE/HBP/140, preface, iv). The guidelines also stress that "each country needs to build and operate its own system within its own social, economic and cultural environment", and that the publication "does not advocate any unique solution because each country has a different history and experience" (ECE/HBP/140, preface, v).

6. To further refine its policy advice, the Working Party's Bureau decided in 2007 to undertake a study on fees and charges in the area of land cadastre and registry, and a questionnaire was developed by a Working Party team comprised of representatives from the Czech Republic, Norway and the United Kingdom, coordinated by the delegation of Lithuania.

¹ The study was prepared by a consultant, Mr. Neil King, under the guidance of and with contributions from members of the Working Party's Bureau.

7. The questionnaire, with a total of 28 questions, was divided into five main sections:
 - (a) Organizational and administrative issues (questions 1–7);
 - (b) Financial and economic issues (questions 8–15);
 - (c) Specific issues on fees and charges (questions 16–22);
 - (d) Dissemination of information (questions 23–27);
 - (e) Future plans (question 28).
8. The questionnaire was sent to 48 UNECE member States, of which 45 sent in answers (a response rate of approximately 94 per cent).
9. A summary report (ECE/HBP/WP.7/2007/4) was prepared and a presentation on the outcome of the questionnaire was made at the Working Party's fifth session (Geneva, 19–20 November 2007). Results of the questionnaire were considered in the development of the guiding principles on fees and charges as well as in identifying good practices in real property registration and cadastre.

I. RESULTS OF THE QUESTIONNAIRE

A. General observations on the results of the questionnaire²

10. *Organization and administration.* Public agencies or State enterprises are in most cases the sole responsible authority for the administration of real property registers and cadastral information. They are also responsible for some 59 per cent of the administrative activities related to cadastral surveying carried out in the countries. Private companies are responsible for 23 per cent and private-public organizations are responsible for the remaining 18 per cent. In roughly 94 per cent of countries, real property registration is a public monopoly. In some 33 per cent of countries, all three activities are administered by a single institution: in some 27 per cent of the responding countries, only the real property register and cadastral information are administered by a single institution. The performance of surveying activities is the responsibility of the private sector in 32 per cent of countries, and of the public sector in 26 per cent. Of the remaining countries with mixed responsibilities, the work is predominantly performed privately in 17 per cent of them, predominantly by the public sector in 12.5 per cent, and is roughly balanced private/public in the remaining 12.5 per cent.

11. *Finance and economy.* Roughly 50 per cent of respondents indicated that real property registers are financed from fees, 30 per cent received funding from central budgets and 20 per cent stated that registers are funded from a mixture of sources. One of the respondent countries obtains some 59 per cent of financing from the local budget. Cadastral information administration is financed in 36 per cent of countries from fees, in 26 per cent from the central State budget and in 38 per cent from mixed sources. Overall, half the respondents said that their

² The percentage breakdowns given are rounded figures based upon respondents' numeric or specific replies. Written comments have not been taken into account. A small number of countries made revisions to their questionnaire responses, and these changes have been incorporated here.

cadastral information administration is financed mostly from fees. Three countries have their cadastral information administration partly financed from local budgets. Some 33 per cent of countries have cadastral surveying financed entirely from fees, 12 per cent entirely from the State budget, and 20 per cent from a mix of fees and State budgets. The remaining 35 per cent have other types of funding, the majority from fees. The majority of land administration services in the participating countries are financed from fees, and the majority of payments return to the State budgets or to public institutions. In the case of cadastral surveying, some 35 per cent of the income derived from fees and charges is recovered by private companies.

12. *Cost recovery.* A more limited number of responses were received with respect to the amount of cost recovery achieved: 31 countries (out of 45) on real property registers, 28 on cadastral information and 24 on cadastral surveying. Some 68 per cent of real property registers achieve 100 per cent or more cost recovery, a further 16 per cent between 50 per cent and 100 per cent and the remaining 16 per cent less than 50 per cent. Some 43 per cent of cadastral information institutions achieve a cost recovery of 100 per cent or more, 14 per cent between 50 and 100 per cent and 43 per cent less than 50 per cent. Regarding cadastral surveying, some 52 per cent of the responding countries achieve 100 per cent cost recovery or more, 22 per cent between 50 and 100 per cent, and 26 per cent less than 50 per cent. In general, there is a high level of cost recovery in the respondent countries. The countries achieving at least 100 per cent cost recovery are those with the more mature systems and a longer history and greater experience in developing and managing the systems. Over time, more countries will achieve (or be able to achieve) full cost recovery. In general, real property registers are able to cover operational costs and be profitable. However, some agencies work on a full cost recovery basis but are not allowed to make profits or earn a return on investment. Cost recovery on cadastral information (with 57 per cent of respondents recovering less than their costs) is not as efficient as it is for the registers or survey activities. However, cadastral information has potential for growth as, for instance, the development of multi-purpose cadastres will allow the anchoring of additional information on base cadastral information (especially parcel-based geo-referenced data). Cadastral surveying is the activity where private companies are most involved, and market competition will guarantee that companies function at 100 per cent recovery rates. Under circumstances where full cost recovery cannot be achieved, the shortfall is funded by State or public funds.

13. *Fees and charges: administrative aspects.* All responding countries have legislation in place to regulate fees and charges. Most countries define charges by legislative regulation. In the majority of cases, the amounts of fees and charges related to real property registers and cadastral information are set by the Parliament or by the responsible government ministry.

14. In seven countries, cadastral surveying operates on the open market principle with fees generally based upon the amount of work involved and agreed between the contracting parties.

15. *Dissemination of information.* Real property register information and cadastral information, respectively, are supplied either: (a) free of charge to the public and private sectors in 32 per cent of the cases (for real property register) and 36 per cent (for cadastral information); (b) free of charge to the public with a charge to the private sector in 39 per cent of the cases (for register) and 36 per cent (for cadastral information); or (c) with charges for both public and private sectors in 29 per cent of the cases (for register) and 28 per cent of cases (for cadastral information). Some 80 per cent of the respondents provide for online applications for

information. Of these, 71 per cent apply a charge for real property register information and 61 per cent apply a charge for cadastral information. Among those that charge for the service, fees are the same as for paper applications in 43 per cent of responding countries. The remaining 57 per cent have differing fees.

16. *Future plans with respect to fees and charges.* A total of 44 countries responded to this question, of which 11 had no current plans for change. In the remaining 33 countries, fees and charges were under review, some on an ongoing basis. In general, there appears to be a wish to balance cost against revenue, with some countries expecting to reduce charges and others needing to increase them.

B. Questions and answers related to the questionnaire

17. Responses to the questionnaire identify a number of issues that are fundamental in considering future practice with respect to fees and charges.

18. *Should real property cadastre and register information and data be provided to customers free of charge?* Some jurisdictions mandate the “free” supply of information under specific circumstances, but in general, responses concurred that customers should be charged. Generally, information is not “free” and always bears costs. Taxpayers should not carry a burden of payment if they have no personal interest or benefit.

19. *Should the real property register and cadastral work be performed by State-commissioned organizations, enterprises or agencies (monopolies), or under market conditions (both for private and public sector)?* The responses show that all real property registers (and 98 per cent of cadastral information systems) are administered by public authorities or State agencies/State enterprises, with some 94 per cent having a monopoly for the registration of real property. It is probable that the users care little about who performs the work, provided that their rights are protected and the costs are minimized.

20. *Should fees and charges for register and cadastre works be set (approved) by the Parliament, the Government, the ministries, the organization performing the works or the market (in the case of non-monopolistic activities)?* Most countries regulate fees through their administrations in consultation with the organizations involved in the work, and this seems to be a generally accepted practice. Several countries, however, have free market competition with respect to cadastral surveying activities.

21. *Should the real property registration fee be fixed or calculated on the basis of property value?* The recovery of costs seems to demand that higher value properties carry a higher fee on the simple basis that errors, problems or defaults with these properties carry a higher financial risk. The level of risk and the costs will depend upon the jurisdiction concerned, and the method chosen can only be their responsibility.

22. *Should money received from the real property cadastre and register work and services go directly to the State budget or to the budget of company carrying out the work?* Where the State directly funds services, it will normally expect the money recovered to go back to the State budget. It is clear from past experience that there are inherent inefficiencies in this approach. For

example, it is easy for an organization funded by the State to “work to the budget” and show no incentive to cut costs or seek efficiencies. But even when organizations seek to make improvements, they may not be allowed by the budget to do so. Almost all respondents stated that there are advantages in returning money directly to the organization or company doing the work. Such organizations, whether private or governmental agencies or enterprises, generally work out tightly controlled business plans that require them to recover their costs and make a return on investment. Where better efficiency means better financial returns, there are incentives to improve systems, provide new services and generally promote economic growth. This is more likely to happen when organizations have full control of their finances and can benefit from improved returns.

23. *Should income earned from real property cadastre and register works and services fully cover the costs of register works and services and/or cadastre works and services?* In general, with developed systems the user should pay the full cost. The question is less easy to answer for systems, still under development. First-time registrations can be very expensive, especially when extensive new surveys are required, and if costs are too high this may depress the market. In such situations, compulsory registration of large areas will invariably spread the survey and information collection costs, and reduce the unit cost of transaction per parcel. In this case, it is common then for costs to be subsidized by the State for first-time registrations. Cost-recovery mechanisms can be imposed for subsequent transactions. Such an approach requires careful accounting and good cost management.

24. *Should fees and charges for real property cadastre and register works and services be uniform for all (public institutions, private sector and population) or differentiated?* Fees and charges should be based upon the needs of society. In some countries, average salaries range around or below the United Nations poverty line. In such situations, it is sensible to keep any fees and charges for registration of property or land-use rights at a low enough level to promote universal registration and the consequential benefits (e.g. increased security of tenure). In general, fees and charges for a given task (e.g. registration of a property) should be based on the same criteria irrespective of the status of the entity involved. This is not the same as setting fees and charges for the supply of a service that may be used for commercial purposes. The Directive of the European Parliament and the Council of Europe (2003/98/EC) on the re-use of public sector information provides a useful guide. It allows for the exchange of information between public bodies for public tasks, but does not prevent the adaptation of a differentiated charging policy for commercial and non-commercial re-use (2003/98/EC, preamble, para. 19). Charges may be differentiated.

25. *How should register and cadastre information and data be valued?* The investment value of registers and cadastres to the country or community will be invariably larger compared to the operational costs of the organizations involved, and will have little relationship to the fees and charges for obtaining the information. Within the context of the land market, the value of information depends upon the level of demand for information and the quality of the information. In general, the more up-to-date and reliable the information, the greater the value.

26. *What future tendencies seem likely with regard to financing and the determination of fees and charges for these activities?* Many countries are taking a more business-oriented approach and requiring their registers and cadastres to recover all their costs from users and some countries are merging the operations under one responsible body. These trends seem likely

to continue. Modern technologies are helping to both drive the unit cost of transaction down and open up the possibility of creating added value, thereby generating more financial returns. These improvements can occur in both the public and private sectors, and can help strengthen the overall development of land markets.

27. Administrations seem certain to maintain their rights to control the values of fees and charges.

II. GENERAL PRINCIPLES ON THE APPLICATION OF FEES AND CHARGES

A. The cost of land administration

28. The 2005 UNECE report on land administration (ECE/HBP/140) identifies a number of scenarios concerning financing of land administration systems that will be further elaborated in this chapter. These options probably reflect quite reasonably the range of situations found within countries affiliated with the Working Party. There are advantages and disadvantages to each of the options, but decisions on the best way to implement policies are society-specific and only the country concerned can decide what is most appropriate.

29. *No cost recovery and all operations are paid for by the State.* In this scenario, the system is effectively subsidized by all taxpayers and has few incentives for those concerned in the operation that go beyond the needs of satisfying the demands of the bureaucracy. This system is comfortable for those involved, while their funding ministry provides the resources needed. It can be difficult for agencies operating in this way to respond to changes in the market because of the need to seek governmental approval for any variation to their budgets. It also does little to ensure that the services provided are used in a rational way, as users are unaware of costs.

30. *Users pay for the cost of making the data available, but not for the cost of their collection and updating.* This scenario reflects the situation in many countries where systems are currently being developed and government covers the costs as a step towards the creation of land markets. Apparent user costs may be low, but as all taxpayers are contributing, the overall costs of transaction may be high. Unless well controlled, this can lead to unfair competition where government agencies with access to cheap or even free information compete with commercial companies offering similar services.

31. *Partial/full cost recovery.* This scenario applies to most of the countries that responded

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