

ECONOMIC COMMISSION FOR EUROPE

WORKING PARTY ON LAND ADMINISTRATION

GUIDING PRINCIPLES FOR PUBLIC/PRIVATE PARTNERSHIPS (PPP) IN LAND ADMINISTRATION

PRINCIPES GÉNÉRAUX DES PARTENARIATS ENTRE LE SECTEUR PUBLIC ET LE SECTEUR PRIVÉ DANS LE DOMAINE DE L'ADMINISTRATION DES BIENS FONCIERS

РУКОВОДЯЩИЕ ПРИНЦИПЫ ПАРТНЕРСТВА ГОСУДАРСТВЕННОГО И ЧАСТНОГО СЕКТОРОВ В ОБЛАСТИ УПРАВЛЕНИЯ ЗЕМЕЛЬНЫМИ РЕСУРСАМИ



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GUIDING PRINCIPLES

FOR PUBLIC/PRIVATE PARTNERSHIPS (PPP) IN LAND ADMINISTRATION

Background

1. At its second session in November 2001, the Working Party on Land Administration held an in-depth discussion on public/private partnerships in land administration. The Working Party took note of the initiatives taken in many ECE Member States to improve services by creating effective public/private partnerships and it agreed that there was much scope for sharing experience between countries. Accordingly, it was proposed that the Working Party prepare guidelines for effective public/private partnerships (HBP/WP.7/2001/10, Annex I).

The primary objective was to prepare a set of principles designed to:

- Provide information and guidance to those national authorities which have not yet adopted PPP arrangements;
- Help senior land administration officials to fully exploit the benefits of such arrangements.

2. The following national experts were designated to the Task Force for the preparation of the study: Mr. Hayk Sahakyan (Armenia); Mr. Peter Creuzer (Germany), the Chairman of the Task Force; Mr. Paul van der Molen (The Netherlands); Ms. Božena Lipej (Slovenia); and

Mr. Ted Beardsall (United Kingdom).

Introduction

3. Recent years have witnessed a fundamental change in the way in which governments offer services to the citizen. A paradigm shift is taking place in the land administration sector, driven by changes in the wider business environment. The greatest influence has been the rapid increase in the access to and use of information technology, which created new opportunities for business and offered the citizen new possibilities for obtaining information and conducting electronic business.

4. The response by governments has been the emergence of a new political ideology. This has focused on re-examining the role of government, reducing bureaucracy and the tax burden, tapping into the expertise of the private sector and introducing competition for the delivery of services. Governments in many UNECE countries now routinely ask, in respect of a wide range of services, whether service delivery can best be supported by the private sector.

5. The establishment of Public/Private Partnerships (PPP) is one outcome. The PPP approach recognises that responsibility and accountability remain within government whilst service delivery can be enhanced through engaging private sector expertise. Those bodies/authorities entrusted by national governments with responsibility for land administration have not been immune to these changes in the business environment and government thinking. They too have sought to improve service delivery and provide increased access to information by actively engaging the private sector.

6. The driving forces for the establishment of PPP usually are: increased public expectation for public services; need to improve the value delivered by public services (in terms of both efficiency and effectiveness); need for capital investment in the assets required to deliver public services; innovation in service delivery and encouragement of competition. The success or failure of PPP will be determined by the local political and regulatory framework, public acceptance, the quality and availability of the service provider market and, in the case of this study, the attitude of land administration stakeholders.

7. This study has been prepared with the aim of providing information about the current use of PPP amongst land administration authorities in the UNECE region. Recording and drawing on the experience of Member States the study presents the benefits of forming such partnerships and suggests basic principles and recommendations for the collaboration of the public and private sectors in the field of land administration.

8. The study is based on the questionnaire prepared in 2003, which canvassed the views of public sector land administrations, comprising 43 UNECE countries and 7 Canadian provinces. A 52 percent response rate was achieved equating to 26 replies from the 50 organisations that were sent the questionnaire. Of the 26 responses, 6 countries (representing 23% of the total number of replies) indicated that they have no PPP arrangements. Of the 20 countries/provinces indicating that they have some form of PPP arrangements:

- 60% indicated that their governments have introduced policies to support PPP
- 80% indicated that their land administration authorities have entered into PPP arrangements
- 80% indicated that PPP arrangements had been made through a formal tendering process

- 95% have contracts in place governing PPP arrangements

9. The tasks for which the private sector was most frequently engaged were mapping and survey related activities, with 40 percent of respondents indicating the existence of such arrangements. In respect of the perceived benefits of PPP, the majority of respondents cited improved service delivery and reduced costs.

10. When preparing a set of guiding principles it is important to recognise that there is no common understanding of precisely what the term PPP means. The concept of PPP cannot be standardised internationally since PPP initiatives must meet the policy objectives of individual governments, complement other public procurement approaches and service delivery methods and must be implemented in light of the available resources.

However, for the purpose of this document a working definition of PPP is as follows:

'A partnership between a public organisation and a private company, which takes the form of a medium to long term relationship in which the partners have agreed to work closely together to deliver improvements to services in the interest of the public. There will be agreed arrangements for the sharing of risks, benefits and rewards and the utilisation of multi-sector skills, expertise and finance. Such partnerships are usually encouraged and supported by government policy'.

I. Current status of PPP in land administration

11. Land administration as first defined in the UNECE publication 'Land Administration Guidelines' (1996), deals with the recording, processing and dissemination of information about ownership, value and use of land and its associated resources. It includes the determination of property rights and other attributes of the land that relate to its value and use, the survey and description of these, their detailed documentation and the provision of relevant information in support of land markets.

12. The official land registers should guarantee ownership and other rights in land and support secure mechanisms for the transfer and financing of real estate. As a basis for sustainable land management they justify considerable investment of human and financial resources in appropriate land administration systems. Establishing and maintaining such systems is a major undertaking.

13. A particular problem when establishing a market economy is that land administration systems are facing a lack of appropriate organisational frameworks for staff and financing. Conversely in the more advanced countries where the issue of organisational frameworks has been addressed, budget constraints will have raised questions about how to deliver efficient services to the public with fewer staff and how to reduce and recover costs. The private sector in many countries often has to compete against well-established, large government-owned or recently privatised companies.

14. Efforts to set up spatial data infrastructures (SDI) have a strong influence on contents, underlying data models and architecture of large-scale cadastral datasets. Requirements such as interoperability or integration of data in combined datasets offer challenges for efficient public-private partnerships. This has led to a situation whereby the current status of PPP in land administration clearly varies across all ECE Member States according to each country's

individual circumstances. PPP arrangements are mainly perceived as a solution for problems in the wider field of service delivery in land administration. The question to be addressed is the extent to which the private sector should contribute to the development and further improvement of land administration systems both in former countries in transition and in the established market economies.

Ownership, value and use of land

15. Current practice shows various forms of co-operation between the public and private sectors in terms of responsibilities. Looking at facilitation of the land market, one of the main functions of land administration, we observe that land transfer documents can be drawn up by the parties themselves (e.g. Sweden), attorneys (e.g. USA), lawyers (e.g. UK), public notaries in private practice (e.g. France, the Netherlands) and notaries in the (public) registration office (e.g. Czech Republic). The registration of ownership, however, is the responsibility of civil servants everywhere, either in the courts, or in a government agency. The cadastral survey can be undertaken by publicly appointed private land surveyors (e.g. Germany, France), commercial land surveyors contracted by the government (occasionally), or by land surveyors in public service (e.g. in Norway, the Netherlands, United Kingdom). Title insurance, as practised in the United States is a special case: private insurance companies hold their own cadastral registers and maps as a business asset, in order to issue title insurance certificates. Although not common practice it is possible for some tasks, such as the dissemination of land information, that have traditionally been regarded as a function of the public sector, to be performed by a private company under concession.

16. Land and property valuation can in principle be divided into individual property valuation and mass valuation (systematic valuation of groups of similar properties by use of standardised procedures). Individual property valuation is undertaken to meet the need of participants in property transactions and mass valuation mainly serves taxation purposes. Whereas individual property valuation is normally carried out by valuation professionals (chartered or sworn valuation officers) that mostly belong to the private sector, mass valuation in the public interest is carried out either directly by government agencies or by private sector professionals operating under government contracts.

17. Land use can be determined either by land cover or by function. Recording of land cover normally is an activity of a government agency by means for example of remote sensing data; the function of land use is usually recorded by government bodies responsible for zoning (usually the municipalities).

Operational tasks

18. Operational activities could be divided into core tasks of land register and cadastre, associated tasks and supporting tasks. This subdivision normally includes an allocation of concrete tasks to the public or private sector. Whereas the contents of the land records of a country require the liability and guarantee of the state, hence a substantial involvement of the public sector in their maintenance, other tasks, such as data gathering or land management can be outsourced to the private sector, which is operating on sound business practices.

19. Associated and supporting tasks are marketing and sales of geospatial datasets

(framework data, reference data), value-adding and technical services, research and development, vocational training and capacity building. It must be emphasised that these tasks are equally important for the infrastructure of a functioning land administration system as the core tasks themselves. It is possible that the above tasks may be performed more efficiently by making use of appropriate PPP arrangements.

Core tasks of land registration and cadastre

20. The land registers should be impartial and not be subject to any conflict of interest between different parties. The core tasks of land registration mainly include:

- Registration of all real estate (land parcels, buildings, flats), property and other rights, encumbrances and mortgages, public rights in land;
- Securing ownership in land;
- Enabling secure land markets, property transactions (conveyancing of real estate, sales contracts and mortgages);
- Advisory service for public and private customers; and
- Collection, maintenance and dissemination of base information.

21. These tasks are performed by various institutions and stakeholders, it depends on the country context. They are mainly undertaken by institutions dealing with land registration such as land registry agencies and local courts. Private stakeholders who have an interest in these core tasks include notaries, lawyers, banks, real estate agents, private experts etc.

22. In the context of PPP, service delivery via electronic media (e-Government) and all relevant initiatives at state, regional or municipal level, offer many chances for improvement through PPP arrangements. In fact, most of the respondents to the PPP questionnaire see the major benefits of PPP in this area.

23. Originally designed as a register for determining land taxes, a cadastre nowadays fulfils a multipurpose function in many countries. The core cadastre tasks can be summarised as follows:

- Maintenance of real property registers and maps for further specification of the entries in the land register; securing ownership in land;
- Provision of geometric data on cadastral boundaries (parcels), other cadastral objects and their unique identifiers;
- Data exchange with other public registers;
- Provision of the official spatial reference through delivery of spatial base data;
- Creation of market transparency through recording and maintenance of all results from valuation of real estate and sales contracts;
- Advisory service for public and private customers; and
- Collection, maintenance and dissemination of relevant datasets.

24. These tasks are performed by institutions and stakeholders, mainly by cadastre authorities at national, regional or local level, licensed surveyors, state survey agencies and

official valuers of fixed assets. The replies to the questionnaire show that the tasks most frequently performed on a PPP basis are mapping and survey.

Associated tasks

25. Based on the data and documents stored and maintained by land registries or cadastre authorities, associated tasks mainly consist of:

- Performance of urban and rural development procedures including urban re-development and land consolidation;
- Data maintenance for planning purposes;
- Public acquisition of land;
- Recording government measures on environmental protection (soil etc.); and
- Securing sustainable management of natural resources, disaster management, flood plain management, spatial planning.

26. Tasks are performed by institutions and stakeholders, depending on individual country regulations. They could be performed by municipalities, licensed enterprises or persons (e.g. publicly appointed surveyors in Germany), private planning enterprises, state or local cadastre authorities.

27. Information on land and its resources is the very essence of every state. The citizens' proper understanding of the interrelations between state and society requires that such information is easily accessible and usable. Much of the information develops its use to the full only through its uniform spatial reference (geoinformation). We distinguish between geospatial *base* data (cadastre data or topographical information) and *thematic* data (e.g. spatial planning, utilities). Digital tools allow selection, analysis and synthesis of the available data using Geographical Information Systems (GIS) and creation of tailor-made datasets. Special efforts, including appropriate PPP arrangements, have to be put into making access for citizens and customers to land register and cadastre data as open as possible and as secure and restricted as necessary.

28. The establishment of high-quality geodatasets is very expensive due to staff requirements and necessary investments. The bulk of the existing geospatial base data has therefore been captured and maintained by government authorities within the scope of their statutory tasks. Concrete projects, for e.g. navigation, geo-marketing or other emerging markets, require combination with thematic data of other – private or public – institutions.

29. This value-adding process, as well as marketing and sales of geospatial data offer further opportunities for PPP based on individual business models (resellers, value-added resellers, licences, etc.). Large-scale geospatial base data serving as basis for value-adding processes have gained a market potential that goes far beyond the role of land registers and cadastres as means for securing ownership. This potential reaches into the field of governmental infrastructure services and promotion of business and technologies, and comes into effect only if the responsible land registration and cadastre administrations and private partners contribute their specific fields of expertise to a PPP. It is necessary to establish tailor-made, market oriented and harmonised business models, where public-private cooperation provides the appropriate service infrastructure and creates a real 'win-win' situation for all partners.

Supporting tasks

30. Geoinformation markets and SDI depend to a considerable extent on the legal framework that enables a controlled collaboration of all parties involved. In many countries the establishment of national SDI has begun. The current geoinformation market in the ECE Member States could be characterised by many features, where geospatial base data are to be processed or integrated and where off-the-shelf products are to be developed. In addition, web-based solutions for access to data conquer the market and both technical services and hard- and software regularly need to be adjusted to the latest demands. There is a clear opportunity for further development of this market through creation of PPP arrangements for the mutual benefit of all stakeholders, data providers and customers.

31. Looking at well functioning modern land administration systems, it becomes clear that constant research and development work needs to be done. Such work is not only carried out within the public sector (e.g. universities), but also in private institutions, organisations or companies (e.g. in the field of technical developments or standardisation). Moreover changes within the institutional or organisational framework for land administration as well as constant developments and improvements in technology require training of staff. Mutual benefits and synergies could arise out of PPP arrangements also in this field.

32. The basis for entering into PPP differs among UNECE Member States. This applies to licensing regulations for statutory tasks that need to be carried out by licensed persons or companies (e.g. notaries, licensed surveyors) as well as to procedures for contracting out services or procurement tasks that do not fall under any licensing regulation. Licensing should foster PPP and give the private sector a more active role in performing statutory tasks. PPP should result in a medium to long-term relationship. It is acknowledged, however, that in the UNECE Member States the term PPP is used to describe a range of different types of collaboration between the public and private sector that vary in terms of both scope and duration.

II. Benefits of Public/Private Partnerships

33. It is a general trend in Europe and worldwide that the private sector has increasingly been invited to take part in different activities in the field of land cadastre, land registry, land consolidation and provision of land information. The aim is to bring together the experience

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