

REGIME FOR REGULARIZATION OF OWNERSHIP OF IMMOVABLE PROPERTY IN UNDISPUTED CASES

The Constitution of the Democratic Republic of Timor-Leste guarantees, in its article 54, the right of every citizen to the private property of land. The full enjoyment of this right depends on a solution for the uncertain status regarding ownership of immovable property in the country.

In October 2008, the National Directorate of Land, Property and Cadastral Services of the Ministry of Justice started an extensive effort to collect ownership information regarding immovable property, with the goal of assembling the *Registo Nacional de Propriedades* [National Property Inventory] and clarifying the factual and legal status of immovable property within our country.

This data collection effort, known as cadastral assessment process, allowed all citizens to claim their property rights over immovable property by submitting "ownership declarations" (ownership claims). These claims and all the cadastral maps identifying each land parcel or building were published locally in boards affixed in public places of easy accessibility and, on a nationwide effort, in newspapers, websites and campaigns on radio and television. Their wide release allowed authorities to ascertain the existence of any possible disputes related to the rights of the immovable properties already cadastred as they are perceived by the population.

In April 2011, with more than 35,000 (thirty five thousand) land parcels already recorded, the government was able to ascertain that in 92% (ninety two percent) of cases there was no dispute over the property of mapped properties. For that great majority of Timorese citizens, the right to own their land or home is consensual, i.e., it is not questioned by third parties, regardless of location - in villages, Suco, Districts or the country.

In order to provide due legal recognition to this majority of undisputed cases and regularize the status of claimants in undisputed cases included in the Cadastre database, this Decree-Law recognizes the right to own immovable property when such right is not contested.

Thus, the government hereby decrees the following, under the terms of articles 54, number 1, and 115, number 1, item "b", of the Constitution of the Republic, to be valid as law:

Article 1

(Object)

1. This Decree-Law establishes the regime for recognizing property rights over undisputed immovable property, for the purposes of registration.
2. The goals of this regime are the following:
 - a) For registration purposes, to recognize the property rights held by individual nationals over immovable property which is undisputed;
 - b) To register immovable property which is under the private domain of the State as recognized by law;
 - c) To identify in a definitive way all the claimants involved in disputed cases of immovable property.

Article 2

(Definitions)

For the purposes of this law, the following definitions will apply:

- a) *Ownership Claim* is the act by which one or more individual persons declare that they hold the right to own an immovable property before the National Directorate of Land, Property and Cadastral Services (DNTPSC) within the scope of the cadastral assessment process;
- b) *Claimant* is the person who has submitted a valid and timely ownership claim, individually or in a group, as applicant;
- c) *Uncontested Claimant* is the sole claimant or group of claimants, in agreement, of a piece of immovable property;
- d) *Disputed case* is a case in which there is more than one claim over the same immovable property, or cases over which there is no agreement about the borders of two or more pieces of immovable property.
- e) *Immovable property*, , is the soil and all that is attached to it permanently, namely the buildings, under the terms foreseen in the Civil Code.

f) *State's Public Domain*, are the areas defined by law, on which there can be no private ownership.

g) *State's Private Domain*, are the properties of the State which, according to law, may be subject to legal commerce.

Article 3 (National Property Cadastre)

1. The National Property Cadastre is the database containing official information on immovable property collected during the cadastral assessment process.
2. The National Property Cadastre includes the cadastral database and the database of the property inventory.

Article 4 (Effects of Recognition)

1. The validation of ownership claims in undisputed cases will be the foundation for the inventory and the validated information will be the foundation for the database of the property inventory.
2. Once the property right is recorded in the inventory database, the right will be presumed as existing and belonging to the registered claimant.

Article 5 (Cadastral Assessment Process)

Cadastral assessment is the collection of data about immovable property performed by the National Directorate of Land, Property and Cadastral Services in conformity with the specific procedures set out in a Ministerial Decree, for the purposes of inclusion in the National Property Cadastre.

Article 6 (Equality of Rights)

The recognition of property rights for the purposes of registration is assured equally to both men and women, and discrimination is prohibited in all its forms.

Article 7

(Public Domain)

Property rights over immovable properties located in areas of public domain of the State are not recognized.

Article 8

(Undisputed Cases)

1. Are recognize property rights on behalf of uncontested claimants for the purpose of registration.
2. The recognition of property rights for the purposes of registration is dependent on a Ministerial Order.
3. Except as provided by law, this recognition may be challenged at any time in court.
4. The process for issuing ownership certificates is regulated by a Ministerial Decree.
5. Any agreements resulting from negotiation or mediation in which the parties have agreed on the definitive conveyance of property rights over immovable property are valid for the purposes of ownership claims.

Article 9

(Disputed Cases)

1. Litigious resolution of disputed cases shall be governed by law.
2. Disputed cases may be resolved at any time, by agreement of the parties.
3. The recognition of property rights for the purposes of registration in the cases referred to in the previous number is regulated by a Ministerial Decree.
4. The definitive identification of claimants in disputed cases establishes the possible ownership claimants associated to each immovable property, except in cases of transmission of claim.

Article 10

(Property Inventory Database Updates)

1. The property inventory database must be updated in the event of any changes in ownership of any piece of immovable property due to *inter vivos* conveyance, inheritance or other acts set out according to law.

2. The requirements associated with the form of conveyance of property rights over immovable property are established in a Ministerial Decree.
3. The procedures for updating cadastral information and registering the conveyance of ownership are regulated by a Ministerial Decree.
4. The procedure for updating must conform to the following principles:
 - a) The facts resulting in the conveyance of rights over immovable properties cannot become official until the properties are definitively registered on behalf of the person from whom the right is acquired;
 - b) The registration is made at the request of the legitimate party;
5. All the acts of conveyance of property rights recognized within the scope of this statute may only be made on behalf of individual persons who are nationals or the State.
6. Conveyance on behalf of entities or corporations will be subject to specific legislation.
7. Registration of conveyance of immovable property effected after the attribution of the property right by the present regime will be subject to the authorization of the spouse, as set out according to law.
8. Subject to this Article, the declaration of nullity or the annulment of the legal transaction concerning immovable property does not interfere with the rights acquired over the same properties, under onerous assignment, by a third party in good faith, if the registration of the acquisition is prior to the registration of the nullity or annulment action, or the registration of the agreement between the parties regarding the nullity of the transaction.
9. 2. The rights of the third party however shall not be recognised if the action is proposed and registered within the three years following the conclusion of the transaction.
10. The actions and sentences involving the creation, modification or termination of ownership rights over immovable property are subject to registration..

Article 10

(Judicial Proceedings)

1. The parties in judicial proceedings associated with ownership of immovable property are obligated to inform the Ministry of Justice about the dispute before the expiration of the term for submitting ownership claims, under the penalty of having the registration made on behalf of the claimant party.
2. All Court Orders shall be recorded in the property inventory database, by submitting the necessary certificate..

Article 11

(Crimes)

The practice of active and passive corruption, as well as any forging of documents or submittal of false statements within the scope of the application of this law, are all punishable under the terms of the Penal Code.

Article 12

(Transitory Provisions)

1. All ownership claims collected before the effective date of this Decree-Law are valid provided that the parties comply with the requirement of republication and establishment of a new deadline for submitting new claims.
2. Cadastral maps of the areas included in the Cadastre database before the effective date of this Decree-Law, as well as its respective lists of claimants, must be republished.

Article 13

(Suspensions)

1. The application of line a) of no. 3 of Article 37 of Decree-Law 3/2004, as well as amendments introduced by Decree-Law 24/2009, are hereby suspended. This matter is temporarily regulated by no. 2 of Article 10 of this statute.
2. The suspension is lifted only by legislation expressly lifting it.

Article 14
(Revocations)

All the rules associated with Indonesian law currently in effect in Timor-Leste to regulate conveyance of interest in real property are hereby revoked, when applied to property already subject to the registration procedure, provided for herein.

Article 15
(Effective Date)

This law will be in effect on the day following its publication.