

THE NEW MOZAMBIQUE LAND REGISTRY CODE

THE MAIN REFORMS



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INTRODUCTION

Decree-Law no. 2/2018 of 23 of August has now entered into force. It approves the new Land Registry Code (CRP) and repeals the previous CRP approved by Decree-Law no. 47.611 of 28 March 1967, which was in force for 49 years and applied in Mozambique by virtue of Ministerial Order no. 23944 of 15 March 1969.

The new CRP is a response to the need to modernise and increase the efficiency and effectiveness of public services by creating and implementing an electronic platform in the registries and notarial offices as a way of providing services that are closer to citizens and businesses. This legislative reform is also intended to put the Electronic Government Strategy launched by our Government in 2006 into practice.

Before this reform, the CRP had been subject to sweeping changes made by Decree-Law no. 49.053 of 4 October 1969. This Decree-Law introduced changes to the part concerning the transcription of the register resulting from splitting the title to a property, the annotation of the transcription, the requisition of certificates for transcription, the replacement of index books, the registries' registration books, the binding and numbering of books, the term for opening the books, the entries, the way of writing the register, the indication of the description number of the property, the annotation in the entry for the building and the joining and splitting of title in the entry and the personal entry, the endorsement of the conversion into definitive registration, the registration certificates, the registration notes and the fees.

In addition to this, other small changes were introduced by Ministerial Order no. 200/70 of 2 May, Decree no. 9/76 of 11 March, Ministerial Order no. 342/77 of 27 August, Decree no. 12/99 of 4 July 1990 and Ministerial Decree 37/93 of 21 April.

Recently, Ministerial Decree no. 2/2016 of 6 January introduced a very significant change to the table of fees. After Ministerial Decree no. 37/93, of 21 April being in force for more than 10 years, the rates in the table of fees were increased by more than 100%.

As to the substantial amendments to the CRP, regardless of what will be addressed below, it is important to point out that the CRP brings in a new system by introducing the Integrated Land Registration System (Sistema Integrado de Registo Predial or "SIRP"). The SIRP will have a significant impact on how registration, archiving, submission and obtaining of land/property registration documentation will be carried out. All of these steps will be computerised. The new CRP also introduces simpler wording for the provisions that are maintained and it reduces the number of articles, chapters and headings compared with the previous CRP.

This note provides an outline of the legislative reform approved by Decree-Law no. 2/2018 of 23 August. Here are the main highlights of the new CRP:

■ **Creation of the Integrated Land Registration System (SIRP)**

The SIRP is an IT platform managed by the body that supervises the registry offices area. The platform gathers all the notarial and registration information for the properties described.



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The implementation of the SIRP includes the creation of One-Stop Shops in the Notarial Offices that will operate exclusively by electronic means, and by joint order of the Ministers that supervise the areas of Industry and Trade, Finance and Justice. In-person attendance desks may also be created in the offices of the Ministry of Industry and Trade.

Once the provision of registration services is fully computerised, the rules of territorial jurisdiction completely lose their useful effect. This is because registration must be done through the Internet site and this removes the criterion of considering the geographical location of the property. Thus, the territorial jurisdiction between some of the land registry offices located in the same province can be eliminated, provided they are exclusively using the SIRP and the records for the properties located in the area in question are fully computerised.

The entry into operation of the SIRP will be gradual. This means that, until all the conditions for the operation of the SIRP have been met, the logbooks in physical format will remain in force. Provision is made for the logbooks to be changed into record sheets in a physical format.

■ **Inclusion of the DUAT in acts subject to registration**

The new CRP includes the registration of facts relating to the Right of Use and Exploitation of Land (DUAT) in the facts subject to registration. This is not a change because the land legislation already provides for such registration.¹

Contrary to the rules on expiry of provisional registrations in article 104 of the new CRP, the registration of provisional authorisation of the DUAT will remain in force until the end of the period established in the provisional authorisation. However, there is an exception if an administrative document or certificate of judicial decision declaring the extinction of the right in question is submitted for registration.

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■ **New way to request registration**

In contrast with what was provided in articles 93 to 145 of the previous Code, the new CRP provides for applications for registration to be made in person, by post or electronically on the Internet site.

In-person registration applications must be submitted in the registry office either orally or by filling in a form. The application must be accompanied by the necessary supporting documentation and the immediate payment of any fees due.

In a change to what the previous Code provided in its article 146, the new CRP does not require that applicants for registration by post reside outside the area of the registry office to submit their application in this way.

In the situations referred to above, the new CRP provides for the possibility to return the original documents if they are archived in electronic format.

Finally, as electronic applications are an innovation in the legal system, the new CRP introduces a more comprehensive approach. This approach encompasses: the persons that are bound, the process for the application, the way the deposit should be made and the applicable deadlines, the proof of filing of the application and how this should be presented to the holder, and the access code, among others.

¹ See Article 14 of Law no. 19/97 of 1 October, Land Law.

■ **New form of land registration certificate
- Electronic Certificate**

The electronic certificate is called the Permanent Land Registration Certificate. It consists of providing access to constantly updated information in electronic format on the registrations in force and the pending filings relating to the property described on the electronic platform. These certificates are valid for a period of six months, one year or two years, as requested by the interested party. They may be successively renewed for a period of equal length. Like the paper certificate, the permanent certificate is proof of the facts registered before any public and private bodies.

■ **New deadlines**

In relation to the deadlines, the highlights include:

- i) The reduction of the time limit for completion of registration from the previous 30 days to 10 days. A maximum period of 2 working days is set for urgent records. The previous CRP did not make any such provision.
- ii) With respect to the deadline for issuing the certificate, the provision in the previous CRP was «as soon as possible». The new CRP sets the maximum period of 5 business days certificates to be issued. The electronic certificates are issued and made available within 1 business day from the date of the proof of payment of fees due.
- iii) The new CRP sets special periods for the expiry of the registration of legal or voluntary mortgages, pledges, and the consignment of income, of a value not exceeding two hundred thousand meticais (10 years); the registration of the encumbrance of a potential reduction of gifts subject to collation expires 20 years from the date of death of the donor.

■ **Acts by the registry office at its own initiative**

The new CRP makes better provision for registry offices to remedy deficiencies at its own initiative. These acts are done based on the documents submitted or already existing at the registry office or, when possible, by direct access to the information contained in databases of central or local public administration.

Article 101 of the new CRP provides for the registry offices to update descriptions when the change can be proven by a document issued by the competent authority or by accessing the database of the competent authority.

It is also important to note that the registry offices can deal with the annotation of expiry of the registration at its own initiative as soon as what was referred to above is verified.

■ **Fees**

Despite making a reference to the Table of Fees approved by Ministerial Decree no. 2/2016 of 6 January in relation to urgent registrations, the new CRP expressly sets the fee due. This fee will be double the fee for the normal registration the new CRP's focus on this point is understandable because the table in question pre-dates the CRP.

Further in relation to the fees, article 133 of the new CRP also sets the payment of double the fee due in cases of failure to meet the registration deadlines. Again, this is a situation that the table does not provide for because the previous CRP applied the criminal procedure for these situations.²

There is no provision for the fees due for negative certificates, provided for in article 133 of the new CRP, because negative certificates were created after the table of fees.

² See article 15 and following of the previous CRP.

CONCLUSIONS

The new CRP involves the use of computerised mechanisms for access to and supply of information relating to land/property. Therefore, it is a major milestone for the Mozambican legal system, because the creation of the SIRP will reduce the multiplication of records for the same property. It will also contribute to the unification of the national land registration system and make life easier for holders of records who, by using the new certificates, will be able to obtain all the information on the property in a single document and in a shorter time.

The implementation of the new CRP will increase the role of the registry offices, because certain acts that once were only done by the holders will now be done by the registry staff, at the initiative of the registrar.

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