

## THE IMPLEMENTATION OF PUBLIC E-SERVICES FOR IMMOVABLE PROPERTY CONTRACTS IN LITHUANIA: LEGAL ASPECTS

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### Abstract

*This article analyzes the implementation model of Public E-Services in The Immovable Property Contracts (PESIPC) between Lithuanian State Enterprise (SE) "Centre of Registries" (Centre of Registries) and notary, and its legal aspects. the PESIPC informational system in Lithuania was instituted to simplify the contract conclusion and registration procedures by eliminating appearance in person of the interested parties directly in the Centre of Registries, because all contract procedures would be completed at the notary office. All the official information concerning registry and cadastre of immovable property required for concluding and confirming the contract, must be delivered through the Internet directly to notaries and interested parties. Both the preparation of contract documents and the registration of varied legal facts and contracts themselves in the register of immovable property shall become automatic. This is one of the first the PESIPC systems introduced in Europe, thus it is especially important to analyze the legal aspects of practice of the above-mentioned informational system.*

**Keywords:** public e-services for immovable property contracts, e-services of Centre of Registries

### 1. PESIPC INFORMATION SYSTEM

During the last three years, more than 600,000 of immovable property contracts were concluded in Lithuania, amongst which around 25,000 were signed in the year 2003. Nearly 85% of all the contracts belong to private persons and the rest to legal entities. According to this statistical data, there is a definite need for the public services of immovable property contracts. All the parties interested in immovable property issues, i.e. owners, notaries etc., are interested in developing immovable property e-services. Currently, public services dealing with immovable property registration in Lithuania, are provided by Centre of Registries<sup>4</sup>. However, valid procedure of certificate issuance for the transaction of notarial contracts is fairly complicated. Notaries do not provide acquirers any services related with real rights, legal facts or registration of restrictions at the Centre of Registries. In such a procedure, the acquirer should submit all appropriate documents and pay the Centre of Registries for its services.

The purpose of PESIPC is to simplify the procedure of contract conclusion by eliminating the need for appearance in person of interested parties in the Centre of Registries because all contract procedures must be completely performed at the notary office. Due to contemporary information technologies, it is aimed to withdraw the issuance procedure of the paper certificates, namely the document (certificate), in the e-format shall be sent directly to the notary, who will conclude and confirm a proper immovable property contract. In this way, all the information concerning the immovable property shall be obtained automatically from the registry. However, before accomplishing such fundamental changes in the immovable property registration procedure, it is necessary to analyze and assess all related legal issues.

### 2. LEGAL ASPECTS OF PESIPC INFORMATIONAL SYSTEM

#### 2.1. The conclusion of immovable property contract

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<sup>4</sup> On-line order form: <http://www.registrucentras.lt/epas> (February 2, 2006)

Article 1.74 of the Civil Code of the Republic of Lithuania indicates that contracts of disposal (ownership transfer) or restriction of the real rights to immovable property must be concluded in a notarial form<sup>5</sup>. In this case, the contract must be concluded in a written form and the notary must confirm the fact of its constitution: he must make the appropriate notations in the document, register the contract in the registration book and reserve one copy of the document. Before making an office-copy, the notary must verify the identity of the contract parties to ascertain their actual purposes and explain the consequences of the concluded contract<sup>6</sup>. One should bear in mind that e-form documents are not equated to the contract form made by notary<sup>7</sup>.

It is also important to note that in several foreign countries, the confirmation of the immovable property contracts can be concluded in the e-form, provided that the contract itself is concluded in the e-form. For example, according to the Electronic Notary Statute of Arizona<sup>8</sup> (a USA state), notary actions can be completed in an e-form. The notary uses a certain e-notation, which is connected with a notarial electronic document and constitutes a notarial e-signature. The initiatives of transferring notarial practice to an electronic environment have been observed in the other countries as well (e.g. Austria, Netherlands, France, etc.). It is necessary to keep in mind that the main objective of immovable property public e-services is to allow notaries to present the information to the Centre of Registries in an electronic format. With all that information, the Centre of Registries could register the real rights to the immovable property. In this situation, the issue does not concern form of the contract or how it was concluded, but the follow up procedures after concluding the contract, *i.e.* the registration of the real rights to specific immovable property, after the conclusion of the contract and transfer of the information, necessary for this type of registration.

Therefore, it is possible to state that the establishment and operation of the PESIPC information system should not influence the contract conclusion procedures, *i.e.* immovable property contracts shall be concluded in a traditional notarial form and an e-form of contract would not be applied. Therefore, there is no need to change any part of the Civil Code of the Republic of Lithuania concerning the notarial contract form.

## **2.2. Legal value of the information transferred during the registration procedure of the real rights to immovable property.**

At present, the registration procedure of the real rights to immovable property has included the circulation (processing) of various written documents, thus tackling the legal value of the information which will be circulating in the PESIPC information system based on which the Centre of Registries will register the real rights to immovable property. One must consider not only the admissibility of electronic information, but must also assess the criteria of its adequacy with written documents.

Article 8 of the Law on Electronic Signature of the Republic of Lithuania indicates that an e-signature, which is corresponding to above-mentioned law requirements, has the same legal value to electronic data as a real signature has to the written documents<sup>9</sup>. Therefore, the electronic information operating in the PESIPC system should have the same legal value as the written information, but only if this e-information would be signed off with a safe e-signature, as it is indicated by the Law on Electronic Signature of the Republic of Lithuania. Public e-signature infrastructure should not even be used – the clause 3 of Article 8 of e-signature law indicates that an e-signature is at all times legally valid as established in clause 1 of the a/m article, if the users of the e-signatures agree to this issue themselves. So, in order to equate e-signature practice applied by PESIPC to a safe e-signature, the corresponding transactions between the notaries and Centre of Registries are required. Thus, the issues related with, for instance, the submission of information to the court, or regarding judicial disputes, the information undersigned with a safe e-signature should be considered as a testimony.

<sup>5</sup> Civil Code of the Republic of Lithuania // <http://www.lrs.lt> (February 2, 2006); Art. 174

<sup>6</sup> Commentary of the Civil Code of the Republic of Lithuania. – Vilnius: Justitia, 2001; P. 170

<sup>7</sup> Civil Code of the Republic of Lithuania // <http://www.lrs.lt> (February 2, 2006); Art. 173 Part 2

<sup>8</sup> Electronic Notary Statute // <http://www.azleg.state.az.us/ars/41/00352.htm> (February 20, 2006)

<sup>9</sup> Law on Electronics Signature of the Republic of Lithuania // <http://www.lrs.lt> (February 5, 2006); Art. 8

### 2.3. The identification of the notary

The issue regarding notary identification arises with respect to the PESIPC system because the notary would be working with the data in an e-manner. The biometric identification technology must be applied from a technical point of view. In this case, an essential functional element of an e-signature is such property of a certain e-signature, which allows identifying its subject. In other words, the data submitted in a certain way (the substantial element of an e-signature), should not be random, but should serve as a function of authentication, namely for the identification of a person. In this respect to this issue it is possible to state that in establishing the PESIPC information system, attention should be paid to the fact that in a legal sense it would be possible to identify all the notaries connected to the PESIPC system based on to their e-signatures. The technology may be diverse, including biometric. It is important that this technology should match the criteria for the appropriate e-signature, as stated by the law.

Since the legal basis connected with the use of an e-signature exists in Lithuania, any changes for the establishment of an information system under consideration, related with an e-signature, are not necessary.

### 2.4. The procedure of registration of real rights to immovable property

The basics of registration of rights to immovable property in the registry of immovable property should not be changed (based on the Law on Immovable Property Registry of the Republic of Lithuania<sup>10</sup> for these basics can serve written contracts and other documents). However, the procedure of presenting applications for registration of real rights to immovable property, restrictions of these rights, or legal facts, should be modified. A considerable section of this procedure is regulated by Article 23 of the Law on Immovable Property Registry of the Republic of Lithuania. The procedure indicated in the a/m article, for submitting certain documents to the registry, is inapplicable in the case of the PESIPC system's operation (*e.g.* this article refers to the submission of original documents). Establishing the PESIPC information system, the correspondent changes in the a/m article are needed. They would enable to present applications to register real rights to immovable property in an e-manner.

After setting up the PESIPC system, an acquirer still would have to present an application for registering property ownership rights, but not directly, as the notary would become an intermediate, who would send a particular application for the registry. Based on the application and specific information concerning the basis of registration presented by the notary using the PESIPC system, the manager of registry Centre of Registries should register the rights to immovable property and when needed, with intermediation of notary, should issue a respective certificate, confirming particular rights, which the notary would approved by his stamp. One may suppose that new provisions in the Law on Immovable Property Registry of the Republic of Lithuania and in the Regulations of Immovable Property Registry will be needed, as current provisions are not suitable for applying the PESIPC information system.

Notaries' payment for services provided to them by Centre of Registries is also a relevant issue. Article 43 of the Law on Immovable Property Registry of the Republic of Lithuania indicates that fees and taxes, for using immovable property registry data, are defined by the Government of the Republic of Lithuania<sup>11</sup>. This provision concerns, for instance, the searching for information in the registry. When an immovable property is registered, the order for payment is issued by the secondary legislation, i.e. the Regulations of Immovable Property Registry. According to the point 16.3 of the a/m regulations, a document demonstrating the payment for registration is presented together with an application<sup>12</sup>. This order is defective, if in establishing of the PESIPC information system, the notaries would be assessed for a certain period of time. In that case, the respective modifications would be needed in a/m secondary legislations (the Regulations of Immovable Property registry and other).

## 3.0 CONCLUSIONS

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<sup>10</sup> Law on Immovable Property Registrar of the Republic of Lithuania // <http://www.lrs.lt> (February 5, 2006)

<sup>11</sup> Law on Immovable Property Registrar of the Republic of Lithuania // <http://www.lrs.lt> (February 5, 2006); Art. 43

<sup>12</sup> Regulation on Immovable Property Registrar of the Republic of Lithuania // <http://www.lrs.lt> (February 20, 2006); Art 16.3

Recently valid procedure of certificate issuance for the transaction of notarial contracts is fairly complicated. The payment for services is also complicated enough. Notaries do not provide acquirers any services related with real rights, legal facts or registration of restrictions at the Centre of Registries. The PESIPC information system would change the registration procedure of the rights to immovable property substantially – the acquirers and transferors of immovable property could register their rights to immovable property at the notary.

The establishment and operation of the PESIPC information system will not influence the contract conclusion procedures, *i.e.* immovable property contracts shall be concluded in a traditional notarial form and an e-form of contract would not be applied.

The electronic information stored in the PESIPC system would have the same legal power as written information, but only if this e-information is be undersigned with a safe e-signature, as indicated by the Law on Electronic Signature of the Republic of Lithuania. Moreover, the corresponding transactions between the notaries and Centre of Registries are required. In this case, the issues related with, for instance, the submission of information to the court, or in case of judicial disputes, the information signed off with a safe e-signature should be considered as a testimony. In order to implement the PESIPC information system, new provisions in the Law on Immovable Property Registry of the Republic of Lithuania and in the Regulations of Immovable Property Registry are necessary, as the current provisions defining the registration procedure of immovable property are not suitable for applying with the PESIPC information system.

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