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A Review of the Lagos State Real Estate Regulatory Authority Law, 2021

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Introduction

The Lagos State Real Estate Regulatory Authority Law, 2021 (the “**LASRERA Law**” or the “**Law**”) was signed into law on February 7, 2022. The LASRERA Law repealed the Lagos State Estate Agency Regulatory Authority Law, Laws of Lagos State of Nigeria (**LSLN**) 2015 (the “**Old Law**”) which established the erstwhile Lagos State Estate Agency Regulatory Authority.² The Lagos State Real Estate Regulatory Authority (the “**Authority**”) is the agency created under the LASRERA Law, and it has a similar name to the agency under the Old Law.

The LASRERA Law widened the scope of the Old Law and made significant changes in the regulation and monitoring of real estate transactions in Lagos State (the “**State**”) to be in line with global best practices. Although a step in the right direction, the enactment of the LASRERA Law also raises issues around duplication of laws and application, especially in the light of pre-existing statutes for the licensing and regulation of real estate professionals.

This Article seeks to review the LASRERA Law, identify the key changes and innovative provisions introduced by the Law, and address some of these issues raised.

Establishment of the Authority

The Law remodelled the Old Law and re-established the Authority, the regulatory body saddled with the responsibility of implementing the provisions of the Law.³

The functions of the Authority have been expanded beyond the provisions of the Old Law to include the: (a) registration of tenancy transactions and agreements with durations greater than five (5) years; (b) protection of citizens from illegal real estate transactions; (c) registration and issuance of permits to real estate practitioners in the State; and (d) supervision of applications for permits not limited to project development, advertising licences and property title insurances. The restructuring of the powers and functions of the Authority is expected to foster the effective regulation of real estate transactions in the State. Nevertheless, the Authority must necessarily collaborate with other agencies of the State in ensuring the full implementation of the LASRERA Law.⁴

Register of Real Estate Transactions

The Law mandates the Authority to maintain and regularly update a register of operations for real estate transactions and details of persons, realtors or organizations

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² LASRERA Law, Section 58.

³ LASRERA Law, Section 2.

⁴ LASRERA Law, Section 6

engaged in the real estate sector. The register is to be open to members of the public for inspection purposes.⁵ The requirement for maintaining a register of licensed agents and collating data on property transactions is not entirely novel as the same was required under the Old Law.

Making the register of operations available to members of the public will enable intending buyers to effectively conduct due diligence before engaging in real estate transactions and not solely rely on search reports issued by officials of the land registry as is obtainable in the Abuja Geographic Information System (the “**AGIS**”) where the register is not opened for inspection purposes.

If the provision on maintaining a register is implemented, it will restore professionalism within the State’s real estate industry and be for the benefit of the public. Further guidance is required from the Authority as to how the register of real estate transactions will be maintained or how the necessary information for each relevant transaction will be obtained. It is not clear if the Authority will be at the lands registry to obtain information for its register from the lands registry or if the public/real estate practitioners will be required to register separately with the Authority, and whether electronically or physically.

It is also unclear how this responsibility differs from that of the Land Information Management System (the “**LIMS**”) established under the Lagos State Lands Registration Law (LSLN, 2015) (the “**LRL**”). The LIMS also registers and maintains certain registers relating to land transactions, such as the register of mortgages, the register of caution, and other registers prescribed for use by the Registrar of Title.⁶ The difference may be that while the LIMS is focused on the government regulatory powers as it relates to the location of infrastructure, rights of way and permitting rights other than title, the Authority is focused on the regulation of transactions. Although, it is expected that the Authority will liaise and collaborate with other agencies and departments of the State as required under the Law, it is difficult to turn a blind eye to the possible confusion that may arise from this.

Licensing of Real Estate Practitioners

The Law requires stakeholders operating as (i) property developers, (ii) facility managers or (iii) property management companies, either as an individual or an organization, to be registered with the Authority. Accordingly, registration with the Authority is now a condition precedent to the issuance of permits to engage in real estate transactions.⁷ It is expected that the enforcement of this provision will ensure that only qualified and registered real estate practitioners participate in real estate transactions in the State. It is also expected that this requirement will foster accountability in the rendering of services by real estate practitioners and reduce the participation of “touts” in the State’s real estate business.

⁵ LASRERA Law, Section 25.

⁶ LRL, Section 18 &19.

⁷ LASRERA Law, Section 26(2).

Contrary to the provisions of the Old Law, the LASRERA Law now allows non-Nigerians, subject to obtaining a work permit, to apply for registration to deal in real estate in the State. Also, foreign corporate applicants no longer require at least one of their directors to be a Nigerian in order to qualify for registration.⁸ Allowing participation by foreigners should promote more investment in the State's real estate sector. The Law introduces the issuance of different categories of permits by the Authority to different classes of individuals or corporate bodies qualified for registration. Each category of permit issued is valid for a period of one (1) year with an option of renewal which must be made at least two (2) weeks before the expiration of the permit. However, there are no stated sanctions for failure to apply for the renewal at most two (2) weeks prior to the expiration of the permit.

Real Estate Practitioners' Fees

Similar to the Old Law, the LASRERA Law also limits the fees that clients can be charged by real estate practitioners.⁹ Section 32(2) of the Law states that:

- “(a) in a Letting/Lease transaction, not more than ten per cent (10%) of the total rent collected on any transaction; and*
- (b) in sale or purchase of interests in buildings; where two or more holders of permits are retained by the owner/vendor for the sale/ lease, fees shall not be more than fifteen per cent (15%) of the total proceeds of sale or tenancy.”*

The Law also provides that a property developer's fees shall be based on fair market value and rates as may be determined by an estate surveyor and valuer. The restriction in the amount of fees chargeable by real estate practitioners appears to conflict with the provisions of the Federal Competition and Consumer Protection Act, 2018 (the “FCCPA”) on price fixing. However, it is unclear that Section 107(1) of the FCCPA which prohibits any attempt by an undertaking to directly or indirectly influence or restrict the amount competitors can charge for services provided, also contemplates regulatory price controls.

Furthermore, unlike the Old Law which restricts the amount chargeable by a legal practitioner not to exceed 12.5% of the consideration,¹⁰ chargeable fees by legal practitioners are now subject to the legal practitioners' scale of fees.¹¹ On one side, this provision properly reflects the provisions of the Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order, 1991 (the “**Order**”). The Order allows a legal practitioner to freely charge professional fees outside the itemised chargeable fees in the Order.¹² On the other hand, given that tenants usually bear the cost of drafting the agreement, a removal of the fee cap may lead to real

⁸ LASRERA Law, Section 26(3).

⁹ The Old Law, Section 26(11).

¹⁰ The Old Law, Section 26(13).

¹¹ LASRERA Law, Section 32(1)(h).

¹² The Order, Section 5 and Scale III.

estate practitioners arbitrarily charging high percentages of the consideration as the “Agreement Fee.”

Operational and Contractual Standards

The Law sets out the minimum operational standards to be complied with by real estate practitioners, some of which include: (a) ensuring compliance with tax laws; (b) ensuring the obtention of building permits and certificate of completion from the Building Authority; (c) declaring conflicts of interest to clients; (d) engaging legal practitioners to prepare real estate transaction documents; and (e) dealing with clients’ money within specified timelines.

A noteworthy insertion is Section 32(4) of the Law which requires that all off-plan arrangements¹³ must have a contract with a clause to indemnify the prospective client in the event of non-completion of the project or any breach of contract by the real estate practitioner. However, this provision is vague as it fails to address how a prospective client can be indemnified if a developer becomes unable to complete a project due to bankruptcy or the quantum of compensation that is sufficient to indemnify such affected prospective client. The introduction of such clauses by the Law will aid in the delivery of optimal professional services to the public and the protection of clients from incompetent or fraudulent practitioners.

Although, the Law does not expressly provide for the consequences of non-compliance with these standards, the failure to meet the above operational and contractual standards is likely to be dealt with as an offence (*see paragraph 10 below*).

Real Estate Investment by Foreigners

Section 28 of the LASRERA Law now requires a foreigner (whether a natural or juristic person) who wishes to make a real estate investment first to obtain the permission of the Governor. Under the Law, the Governor will not grant permission, including the renewal of this permission, for a period exceeding twenty-five (25) years.¹⁴ There is no clarification as to the scope of the application of the Law. It is unclear whether this provision applies to all real estate investments or specific types of real estate investments (for example, assignments, leases, tenancies, etc). There should be further clarification to avoid uncertainty and conflicting interpretations of this provision. Furthermore, Section 28(1) of the Law, by implication, amends section 1(1)(b) of the Acquisition of Land by Aliens Law, LSLN, 2015 which exempts foreigners acquiring interests in land less than three (3) years in duration from having to obtain the Governor’s approval. The restriction on the right of aliens to invest in real estate transactions discourages foreign investment in the State’s real estate sector.

In any event, by section 22 of the Land Use Act 1978 (the “LUA”),¹⁵ holders of statutory rights of occupancy (whether Nigerian or foreign) must obtain the prior consent of the

¹³ “Off-plan arrangement” means an arrangement where a person or organization dealing in real estate in the State obtains deposits upfront from the public for property yet to be developed or in the process of development, promising to deliver on terms agreed by both parties. LASRERA Law, Section 1.

¹⁴ LASRERA Law, Section 28

¹⁵ 1978, Cap L5, LFN, 2004.

Governor before they can transfer interests in land. While the LUA creates the obligation to obtain Governor's consent on the holder of the right of occupancy, the Law creates on the foreigner that seeks to acquire interest, in part or wholly, the obligation to obtain the Governor's permission. Foreigners dealing with real estate transactions in Nigeria may need to obtain the governor's approval before they can either transfer or acquire interest in land.

Regulation of Abandoned and Uncompleted Buildings

The Authority has the duty to compile a list of all abandoned buildings and forward the list to relevant government Ministries, Department, and Agencies (**MDAs**) for necessary action.¹⁶ A building is deemed abandoned if it: (i) is undeveloped for a period of up to five (5) years; (ii) constitutes a nuisance; (iii) constitutes a risk to safety; (iv) contributes to environmental degradation; and (v) is used to perpetrate criminal activities.¹⁷ If the Authority is of the view that such an abandoned building threatens public health and safety, it should also report this to the relevant MDAs.¹⁸

Under the Old Law, the Lagos State Estate Agency Regulatory Authority had the power to give notice to the owner or occupier of an abandoned or uncompleted building. This new provision provides clarity on whose job it is to issue notices on uncompleted buildings between the Authority and the Lagos State Building Control Agency (**LASBCA**).¹⁹ The LASBCA, as an MDA, relying on the list compiled and forwarded to it by the Authority, can issue a notice to the owner or occupier of an abandoned or uncompleted building.

The Law has adopted the provision of the LUA on the payment of compensation in cases of revocations of rights of occupancy due to failure to comply with notices issued on an owner of an abandoned or uncompleted building.²⁰ This is welcome.

Dispute Resolution

The Authority has the power to appoint a five (5)-man committee of inquiry (the "**Committee**") to hear and determine complaints by the public against real estate practitioners.²¹ A similar function was carried out by the Control and Monitoring Department under the Old Law, which is no longer recognized under the LASRERA Law.²² Though this function by the Committee is vested in the Authority by section 6(f) of the Law, since the Committee is established by the Authority, it is assumed that the Committee's exercise of the power to entertain public complaints will be as delegated by the Authority. If the Committee, based on its findings, considers the petitioned practitioner culpable, it can recommend the suspension or revocation of the practitioner's permit to the Authority's board.

¹⁶ LASRERA Law, Section 37.

¹⁷ LASRERA Law, Section 38.

¹⁸ LASRERA Law, Section 43.

¹⁹ Section 28 of the Old Law and Section 28 of the Urban and Regional Planning and Development Law, 2019.

²⁰ LASRERA Law, Section 42.

²¹ LASRERA Law, Section 33.

²² Old Law, Section 10.

Any party aggrieved by the decision of the Committee has a right of appeal to the “Court”.²³ The interpretation section of the LASRERA Law defines a “Court” to mean a Magistrate Court or High Court of Lagos State. It remains unclear whether the Magistrate Court and High Court will have concurrent jurisdiction to entertain such appeal or whether an aggrieved party must go to the Magistrate Court first.

Unlike the Old Law, the Law now recognizes mediation, an alternative dispute resolution (ADR) mechanism. This is commenced by an aggrieved party submitting a petition to the Authority. During the investigation of the petition, all concerned parties will be invited. If there is any criminal element of fraud or obtaining under false pretence, the Authority will forward the petition to the police for further investigation and possible criminal prosecution.²⁴

Disputes that can be submitted to mediation are many. They include disputes: (i) between (a) agent and prospective tenant, (b) an agent and a landowner, (c) a developer and a land owner, (d) a developer and prospective tenants, and; (ii) on any other real estate transaction.²⁵ In the absence of any provision as to the bindingness of the mediation conducted by the Authority, the outcome of the mediation will not be binding on the parties just as with other mediation processes. Thus, parties to real estate transactions may not be enthusiastic about pursuing settlement of dispute through this means.

As in the Old Law, before an action can be instituted against the Authority, it must be given at least one (1) month’s written notice of intention to commence legal proceedings against it setting out the (i) cause of action, (ii) particulars of claim,²⁶ (iii) address of the intending claimant, and (iv) claims and reliefs sought by the claimant.²⁷ Though the one-month pre-action notice is mandatory, failure by the Authority to object to an action commenced without the issuance of a pre-action notice will amount to waiver.²⁸

Offences and Penalties

The LASRERA Law has increased the amount payable as fine for non-compliance.²⁹ Unlike the Old Law, the Law: (i) has increased the amount of fine payable (a) by an individual or organization dealing in real estate transaction due to failure to register, and (b) for contravention of the law; (ii) provides for different punishment for a registered and unregistered individual or organization; (iii) removes imprisonment as a mode of punishment for contravention by an individual, (iv) sets minimum amount of fine payable by an individual or organization for failure to register and (v) recognizes

²³ LASRERA Law, Section 34.

²⁴ LASRERA Law, Section 35.

²⁵ LASRERA Law, Section 7

²⁶ Not required under the Old Law.

²⁷ LASRERA Law, Section 44.

²⁸ *Mobil Prod. Nig. Unltd. v. LSEPA* (2002) 18 NWLR (Pt. 798); *Ede v. Access Bank Plc* (2020) 4 NWLR (Pt. 1715) 417.

²⁹ LASRERA Law, Section 48.

the revocation of the permit of a registered individual or organization as an alternative to payment of a fine.

Upon conviction, failure to register now attracts a fine not below ₦250,000 in the case of an individual and not below ₦1,000,000 in the case of a company. Under the Old Law, failure to register attracted a fine of ₦10,000 in the case of an individual and ₦50,000 in the case of an organization. Contravention of any other provision of the Law now attracts a fine (i) in the case of a registered individual, of ₦100,000 and ₦10,000 for each day of default, (ii) in the case of an unregistered individual, ₦100,000 and ₦25,000 for each day of default, (iii) in the case of a registered organization, ₦500,000 and ₦30,000 for each day of default, and (iv) in the case of an unregistered organisation, of ₦100,000 and ₦50,000 for each day of default. The Old Law did not differentiate between a registered and unregistered individual or organization. Contravention of any other provision of the Old Law by (i) an individual attracted a fine of ₦50,000 or three (3) months' imprisonment and a fine of ₦10,000 for each day of default, and (ii) an organization attracted a fine of ₦200,000 and a fine of ₦25,000 for each day of default.

Issues Arising

Duplication of Function Already Vested in the Estate Surveyors and Valuers Registration Board of Nigeria (the "ESVARBON")

It would appear that the LASRERA Law duplicates some of the already established powers and functions of the ESVARBON under the Estate Surveyors and Valuers (Registration, etc.) Act, Cap. E13, Laws of the Federation of Nigeria (LFN) 2004 (the "ESVRA").³⁰ The ESVARBON is the body responsible for the regulation and control of estate surveying and valuation in Nigeria and is accordingly, mandated to register qualified persons as estate surveyors and valuers and maintain the register of estate surveyors and valuers.³¹ To this end, subjecting already registered estate surveyors and valuers under the ESVRA, with a national outlook, to the rigorous process of a fresh registration with the Authority before they can be qualified to operate in the State would appear to be unnecessary and burdensome.

However, since all real estate practitioners are not surveyors or valuers, a sector-level regulator for all practitioners in the real estate sector may be necessary. In addition, since there are surveyors or valuers carrying on business outside Lagos State, a state-level regulation to uniformly guide real estate practitioners in Lagos and cater to the peculiarities of Lagos State may be justifiable.

Notwithstanding the above, there is the doctrine of "Covering the Field". Under it, a federal statute prevails when it is inconsistent with a state law on a concurrent matter.³² The principle appears to be in favour of the ESVRA as against LASRERA with respect to registration of estate surveyors.³³ It is recommended that rather than

³⁰ ESVRA, Section 1.

³¹ ESVRA, Section 6, 8 & 15.

³² *AGF v AG of Lagos State* (2013) LPELR-20974(SC).

³³ ESVRA, Section 2 & 17.

subjecting federally registered estate surveyors to new state registration, the Authority, Nigerian Institution of Estate Surveyors and Valuers, and the ESVARBON should liaise and collaborate on how best to incorporate the already-established provisions under the ESVRA with the operations of the Authority as it relates to the profession of estate surveying and valuation.

Grant of Interest for a Period above Five (5) Years

Section 6(i) of the Law vests in the Authority the power to register a tenancy agreement above a period of five (5) years. Under the LRL, the Registrar of Title and the Deputy Registrar (the “**Registrar**”) are vested with the power to register sub-leases of state land that exceed five (5) years in duration.³⁴ The new provision creates a challenge. It is no longer clear whether a grant of interest in land which exceeds 5 years should be registered with both the Authority and the Registrar or whether Section 6(i) by implication repeals Section 8 of the LRL.

Conclusion

The Law introduces new real estate regulatory requirements in Lagos State. With the coming into force of the Law, more compliance is required from real estate practitioners in the State. As a result of the amendments made in respect of real estate investments by foreigners and the cap placed on real estate practitioner’s fees, the Law is expected to boost real estate investment and ease of doing business in the State.

The introduction of mediation as an ADR mechanism in the resolution of real estate related disputes is expected to significantly curtail endless litigation that usually occur between parties to real estate transactions even over very minor disagreement. However, the non-enforceability nature of mediation as an ADR mechanism will remain a limitation to achieving this purpose of the Law.

It is envisaged that the implementation of the law may invoke confusion and reduced compliance by real estate practitioners in the real estate sector as it relates to the duplication of the requirement of registration with similar agencies and departments. A proper structure for the collaborative implementation of the Law will have to be established to curtail this.

The Law will undoubtedly restore stakeholders’ confidence in the real estate sector and also result in significant improvement in the regulation of real estate transactions and real estate practitioners in the State, and by extension, the real estate sector, if duly implemented.

³⁴ LRL, Section 8.

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