



# Responsible Land Governance: Towards an Evidence Based Approach

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## **PUBLIC-PRIVATE PARTNERSHIPS AS A TOOL TO PROMOTE SUSTAINABLE LAND ADMINISTRATION: CABO VERDE AS A PROMISING CANDIDATE IN A DEVELOPMENT CONTEXT**

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## **Abstract**

Public-Private Partnerships (PPPs) have a long history of being used effectively for infrastructure projects and more recently are being used in the context of services. The use of PPPs for land administration services is fairly limited, but there are a few notable successes in developed economies. In a development context, where donor-funded titling or regularization projects often face serious challenges of sustainability, a PPP approach could provide a model for completing reforms nationwide and sustaining progress achieved in a “project” setting.

A PPP approach would provide a mechanism to: (a) complete the regularization/modernization of the cadastre on unfinished portions of the nation’s territory; (b) relieve the host government of sole responsibility for financing the up-front cost; and (c) ensure a smooth transition to a sustainable use of the new cadastre by granting a concession period to a private entity experienced in land administration.

Although there may be several promising venues in the developing world for exploring the use of a PPP in a land administration sector, this paper will focus on Cabo Verde as one such auspicious candidate.

## **Key Words:**

Cabo Verde, Land Administration, Land Tenure Regularization, Public-Private Partnership

## **Public-Private Partnership as a Tool to Promote Sustainable Land Administration: Cabo Verde as a Promising Candidate in a Development Context**

### **Introduction**

Public-Private Partnerships (PPPs) have a long history of being used effectively for infrastructure projects and more recently are being used in the context of services. The use of PPPs for land administration services is fairly limited, but there are a few notable successes in developed economies.<sup>1</sup> In a development context, where donor-funded titling or regularization projects often face serious challenges of sustainability, a PPP approach could provide a model for completing reforms nationwide and sustaining progress achieved in a “project” setting.

A PPP approach would provide a mechanism to: (a) complete the regularization/modernization of the cadastre on unfinished portions of the nation’s territory, using a private entity experienced in systematic titling and regularization; (b) relieve the host government of sole responsibility for financing the up-front cost of such work; and (c) ensure a smooth transition to a sustainable use of the new cadastre by granting a concession period to a private entity experienced in land administration work.

Although there may be several promising venues in the developing world for exploring the use of a PPP in a land administration sector, this paper will focus on Cabo Verde as one such auspicious setting for this approach. Cabo Verde has embarked on an ambitious program to modernize and integrate its land registry and land administration functions. With support from the Millennium Challenge Account (MCA), Cabo Verde underwent a far-reaching legal reform and has started implementation of an innovative multi-purpose cadastre on four of the country’s nine inhabited islands.

Under the new legal framework, information from several existing registries is being unified into one spatially-enabled and shared database, the new “cadastro predial.” The regularization and integration of existing records into the new cadastre is nearly complete on the island of Sal, and has commenced on the additional islands of Maio, Sao Vicente, and Boa Vista.<sup>2</sup> Under the United States government funded Millennium Challenge Corporation’s (MCC) second compact with Cabo Verde, which commenced in November 2012 and will end in November 2017, it is expected that Cabo Verde will complete the creation of the new cadastre on Sal, Maio and Boa Vista, as well as a substantial portion of Sao Vicente.

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<sup>1</sup> The most widely known example is in Ontario, Canada, with Teranet (now expanding into Manitoba). The UK Land Registry is also moving toward a PPP approach.

<sup>2</sup> DAI implemented the field work in Sal from 2015-2016 under the MCA/MCC compact.

Cabo Verde now faces the important question of how to implement this reform on the country's other islands (including Santiago, the most populous and arguably most complex from the perspective of land registration). In addition, it must be emphasized that the overall goal is not merely to create the new cadastre, but to ensure a sustainable transition in which the new cadastre is used and updated for all new transactions. This involves institutional change and coordination among a number of national and municipal government entities.

The timing to implement the legal reform on the other islands is critical, as it will be problematic to have half the country operating with the new cadastre and the other half lagging far behind. Cabo Verde should try to avoid operating with dual systems. The work on the other islands will require substantial capital in addition to technical expertise. One attractive option for Cabo Verde may be to consider a PPP in order to complete this work in a timely fashion and with a high level of technical capacity. In addition, a PPP would help ensure that the new cadastre is not merely created on the other islands, but is established as the core of a new transactional system recording all future transfers or changes of real property rights pertaining to all parcels. It should be noted that Cabo Verde passed a resolution in 2014 to establish a special unit within the Ministry of Finance to promote PPPs, reflecting a political decision to explore this innovative approach in the appropriate sectors and contexts.<sup>3</sup> Moreover, in recent exchanges with the Cabo Verde government, interest has been expressed to learn more about a PPP approach for land registry services and discuss how it would potentially function.

### **Why a Public-Private Partnership?**

There is no single definition of a “public-private partnership” and the term is used in different ways to cover a range of contractual arrangements. Nevertheless, certain core aspects are almost always present. The World Bank’s “PPP Knowledge Lab” defines a PPP as “a long-term contract between a private party and a government entity, for providing a public asset or service, in which the private party bears significant risk and management responsibility, and remuneration is linked to performance.”<sup>4</sup>

Typically a PPP may be used to provide one or more of the following benefits:

- mobilization of funds and financing
- transfer of risk from the public entity to the private entity
- increased accountability for performance
- mobilization of technical expertise

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<sup>3</sup> See Resolução nº 13/2014, de 21 de Fevereiro.

<sup>4</sup> <https://pppknowledgelab.org/ppp-cycle/basics>

- mobilization of greater resources to achieve accelerated target timelines
- increased incentives for maintenance of the asset or operated system

PPPs have a long history of being used for infrastructure projects and more recently are increasingly being used in the context of services. In the United States, the use of PPPs dates back centuries with one of the earliest examples being the construction of the Lancaster Turnpike toll road in Pennsylvania in 1793.<sup>5</sup> Toll roads provide perhaps the most straightforward example of a PPP: the private entity builds the road with its own financing per specifications provided by government and typically under some degree of oversight by government (both during the construction phase and later operation phase). The private entity's cost, and eventually profit, is subsequently provided by toll fees paid by users during the pre-negotiated concession or lease period. The lease or concession period may also be subject to renewal options, and the amount of fees charged is typically regulated by government. The state benefits by having the road built without having to provide the capital up front. Just as significantly, the state (and users) benefit from what is normally superior maintenance over the life of the concession or operation period, which may stretch over several decades and allow for successive renewal periods. The reason for better maintenance, inherent in most PPPs, results from the fact that the private party has a strong built-in incentive to maintain the road in good condition because its revenue stream depends on user satisfaction.

In addition to infrastructure projects such as roads, bridges, tunnels, ports, airports, and rail systems, PPPs have also been used for water, power, education, health, housing, prisons and, yes, land administration services.<sup>6</sup> A critical element of all these examples, and for any PPP, will be the revenue stream generated during the operation phase. If there is an inadequate revenue stream, then the PPP may not be viable. In the land administration context, and particularly in the Cabo Verdean context, it will be important to examine whether and how a sustainable revenue stream can be reasonably projected and over what time period the private entity's investment can be expected to be recovered with an adequate return.

This paper will examine the possibility of using a PPP approach to complete the modernisation of the land registration system in Cabo Verde as an example of how this could be applied in a land administration context. On a wider note, we note the increasing use of PPPs as structured vehicles to both foster investment and provide value for money for citizens while significantly improving services without relying on central government investment.

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<sup>5</sup> Urban Land Institute (2005), "Ten Principles for Successful Public/Private Partnerships."

<sup>6</sup> For examples of PPPs in different sectors, please see International Bank for Reconstruction and Development / The World Bank (2014), "Public-Private Partnerships Reference Guide version 2.0."

We adopt a cost-benefit approach to spell out the potential benefits for citizens and the economy as well as demonstrate the potential savings to government of this approach, leveraging on the existing MCC investment in the specific case of Cabo Verde. We will examine the potential revenue streams in the Cabo Verdean land administration context, the risks to both the private and public entities, and the benefits. The potential revenue stream may include transaction-based fees (e.g. recordation fees, transfer taxes, title searches and issuance of official certificates), recurrent fees (such as annual property-based taxes) and value-added services (such as market data and mortgage industry related searches).

Although on the one hand the country's population and parcel base is small (presenting a smaller transaction volume to generate fees), on the other hand the modest size represents a manageable magnitude in which to implement a PPP on nationwide scale, avoiding the pitfalls of efforts in other countries that, due to time or budget, are often forced to be piecemeal (either in geographic coverage or with respect to the full range of land registry services). As a result, these efforts often struggle to get past a partial or pilot phase.

This paper aims to show the potential viability of a PPP model for land administration to ensure sustainability "post-project" in a development context. To attract private partners, it is worth noting that in some PPPs the financial risk of the private partner has been limited by the government guaranteeing minimum income streams (and thus paying any shortfall in the event the expected revenue is not produced, assuming the deficit is not due to any fault of the private partner), or by a financial institution providing a bond to the private entity.

Above, we introduced the example of the toll road as the iconic PPP, with fairly obvious roles for the private and public partners. However, with more complicated PPPs – especially for delivery of non-infrastructure services – the different roles of the public and private actors during the operation phase may need to be carefully distinguished. For example, where a PPP has been used to finance the construction of hospital, the private entity may provide only ancillary services during the operation phase (for example catering and janitorial services) while the public entity provides the core medical services. This allocation of roles in the operation phase would be an important, and to some extent sensitive, negotiation in the context of a land administration PPP.

### **Examples of PPPs for Land Administration services**

The most noted example of what is regarded as a successful PPP in land administration is undoubtedly in Ontario, Canada, whose land registry is currently being operated by the private company Teranet. The transition began in 1991 and in 2010 Ontario extended the concession to Teranet until the year 2067. The

same company Teranet was also recently awarded, in 2014, a similar contract to operate Manitoba, Canada's land registry, for a 30-year period, with 10-year renewal options.

Although the Teranet experience is the most complete example of a PPP in the land administration sector, the following countries (or regional areas within them) have either partially privatised land registry services or are in the process of doing so:

- UK Land Registry (largely autonomous and profitable agency which UK intends to privatise)
- Honduras (according to information obtained recently, the government is seeking private partners for a PPP as part of its PATH II strategy. Updated information being sought)<sup>7</sup>
- New Zealand (Land Information New Zealand, or LINZ, has been privatising part of its services and considering the pros and cons of moving toward a PPP)
- India (self-financing "Bhoomi kiosks" in Karnataka part of move toward a PPP approach)<sup>8</sup>
- Dutch Kadaster (also a largely autonomous agency operating self-sufficiently)
- New South Wales, Australia, is apparently considering a PPP to handle part of its land administration services. Updated information is being sought.

Note that land administration self-financing cost studies (also called cost recovery studies) have also been undertaken in many other countries, some in connection with potential PPP initiatives, and various methodologies are being developed and standardized.<sup>9</sup>

Because Teranet is the most thorough example of a PPP land registry system, it is worth briefly summarizing that program. In the 1980s, Ontario decided to transition its land registry system from a paper and microfiche system to an electronic or digital system. It considered traditional contracting but eventually changed its strategy to opt for a PPP. Observers cite three basic reasons:<sup>10</sup>

1. The government was finding the conversion of approximately 4 million properties beyond its capability. After a number of years in the process, by 1991 Ontario had converted only 250,000 properties to the new digital format.

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7 Alvarez, R., Paz, A., Ortega, D., and Alvarez, G. (2016). Towards an Integrated Property Administration Model in Honduras, World Bank Land and Poverty Conference.

8 See "Report Card on Service of Bhoomi Kiosks: An assessment of benefits by users of the computerized land records system in Karnataka" by Albert Lobo & Suresh Balakrishnan, November 2002. Public Affairs Centre. Bangalore.

9 See the "CoFLAS" (Costing and Financing of Land Administration Services) initiative supported by UN Habitat, FIG (International Federation of Surveyors), and GLTN (Global Land Tenure Network). "Costing and Financing of Land Administration Services (CoFLAS) in Developing Countries", Working Document prepared for the Global Land Tool Network (GLTN) by Land Equity International, 2015.

10 See "Assessing the Economic Value of a Better Property Services (BPS) Future: Case Study, Canada – Ontario. Case Study, Canada – Ontario," 2013, prepared by ConsultingWhere Limited and ACIL Allen for Land Information New Zealand (LINZ).

2. The fiscal crisis at that time contributed to a situation in which the Government of Ontario could not easily finance the work.
3. Private sector companies were developing the underlying technology and were eager to apply it to land administration systems.

Initially the Ontario government held a 50% stake in Teranet when it was formed in 1991, but later sold its stake in 2003 for 370 million Canadian dollars.<sup>11</sup> Under the terms of the PPP, Teranet owns, operates and maintains Ontario's Electronic Land Registration System (ELRS). Teranet charges users fees for a range of services. The amount of the fees charged for the core services – such as registration of properties, sales, title searches, filings of writs and liens -- are regulated by the government. However, Teranet is also given permission to provide a range of “Value Added Services” (VAS) for which it has authority to set the fees based on market demand. Such VAS are principally for professionals such as lawyers, bankers, and surveyors, and include services such as: software to streamline transaction workflow and document preparation for transactions; mapping and research tools with demographic statistics and analysis; and risk management services for the mortgage and financial services industry. Teranet is also designated as the collector of the Land Transfer Tax and Retail Sales Tax. The government maintains ownership of the data itself.

Detailed sales and revenue figures are not available, but Ontario's sale of its 50% share in Teranet for 370 million CAD in 2003 indicates that Teranet is running a profitable business despite financial difficulties early on. The economic viability rests largely on an active land market – over 17 million remote electronic registrations have been made since 1999 and 33 million searches since 1995. It is instructive to note that in regard to the newer PPP with the Manitoba Government, Teranet estimates annual royalty payments to the government beginning at around \$11 million CAD and potentially rising to \$24 million CAD at the end of the 30-year licensing period.<sup>12</sup>

### **The Cabo Verde Context**

While the Teranet experience may be a successful model in Canada, what can we learn from this and PPPs in other countries that might be applicable in Cabo Verde? The model must of course be adopted to the Cabo Verde context.

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11 Id.

12 Transfer of Manitoba's Property Registry to Teranet Manitoba: A Summary Document. Completed by Manitoba Finance. April 29, 2014

The following are some of the key issues and requirements that need to be discussed and negotiated with the Government of Cabo Verde (GoCV) in order to implement a PPP whose goal would be to (a) complete the establishment of the new cadastre; and (b) subsequently operate land administration functions:

1. Economic Feasibility
  - a. Cost & Financing
  - b. Revenue
  - c. Concession Duration
  - d. Financial Risk Mitigation
2. The IT Platform & Governance
  - a. Relationship with NOSi
3. Integration with Public (both Municipal and National) Services
4. Performance Standards and Guaranteeing Title
5. Legal Framework

### **Economic Feasibility**

In terms of the economics, the cost and revenue sides would both need to be examined closely. In terms of cost, there are two main components: (a) the capital investment needed to complete the new cadastre on all islands, including any unfinished work on the MCC Compact islands; and (b) operating costs to maintain the cadastre and provide registry services to the public, including maintenance of the IT platform.

For the capital investment cost of completing the creation of the new cadastre, MCA and its implementers are familiar with the costs of building the cadastre on Sal. The authors estimate that the per property unit cost will be significantly lower on other islands, given the considerable costs in the Sal project that were related to its pilot nature. (See further discussion on this cost factor below.) In terms of subsequent operation and maintenance costs, this will depend greatly on the definition of what services the private entity will directly offer to the public and what services will be retained by the public entities. For example, would the execution of a “escritura publica de compra e venta” (a public sales deed) for a property still be handled by the Ministry of Justice’s (MoJ) *Cartorio* with the private entity entering into the process only with the registration of the transaction in the cadastre and “registro predial”? Or would personnel from the private entity perhaps handle this paperwork with only light supervision from the *Cartorio*? This is really the subject of a later point mentioned below, but it affects the operations cost model. Should the Cabo Verdean government be interested in taking the exploration of this idea a step

further, discussions with the relevant government entities would determine allocation of responsibilities and, based on this allocation, a cost model would be developed.

Perhaps the most critical issue in the Cabo Verdean context for a PPP for land administration would be the revenue stream upon which the private partner would need to rely in order to recover its investment and make a reasonable return on investment. The challenge will be achieving sufficient revenue from fees generated by transactions (or from annual fees) on the relatively small base of parcels (or more precisely “predios,” i.e. property units, which can be ground parcels or “fraccao” condominium units). Note for example that Cabo Verde’s population is approximately 500,000 as compared to Ontario’s 13.5 million, with the number of predios in Cabo Verde in the 250,000 to 300,000 range<sup>13</sup> as compared to Ontario’s approximate 5.6 million parcels.

The modernization of the land registry system in Cabo Verde, along with the new mandatory requirement of recording transaction in the “registro predial” after the integrated cadastre is complete in a given area, will increase the level of formally-recorded transactions. (It is widely estimated that approximately 5% to 10% of properties change hands in a given year. For example, studies have reflected annual turnover rates ranging from a low of 3.0% in the Netherlands, to 4.9% in Thailand, 6.1% in Sweden and 13% in the UK prior to a market depression in 2008).<sup>14</sup> Surely, the PPP would rely at least in part on transaction-based fees. However the volume of transactions may not be enough to enable full cost recovery and an adequate return. Therefore, it may be advisable that the private partner also be entitled to a percentage of the annual Property Tax, the IUP (“Imposto Único sobre o Património”). There is an IUP tax levied annually as well as an IUP Transfer Tax. Both IUPs will rely on more accurate information in the new cadastre and its maintenance. It is important to note that tax revenues can be expected to rise with a more complete cadastre, as has been the experience in other countries. With a spatially-enabled database, it is much easier to assure that the 100% of each island’s surface area enters the cadastre and that no parcels are missed in the tax base.

Below is list of possible revenue sources:

1. Transaction-based fees
  - a. *Escritura Publica de Compra e Venda* (Public Sales Deed)
  - b. New recordation in *Registro Predial*

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13 This is very rough estimate of total numbers of “predios” (both ground parcels and condominium “fraccao” units). DAI is currently attempting to make a more refined projection based on our experience in Sal and available data from the other islands.

14 For Netherlands, Thailand and Sweden, see “Costing and Financing of Land Administration Services (CoFLAS) in Developing Countries, Working Document prepared for the Global Land Tool Network (GLTN) by Land Equity International, 2015, p.39.

- c. Conversion from “Diferido” to “Cadastro” status in the *Cadastro Predial*
  - d. Recording a mortgage or other lien
  - e. Recording an easement or other “averbamento” to title
  - f. Update of ownership information including, for example: succession by inheritance, *partilha* (partition by co-title holders which can be by heirs, inheritance, divorce actions, or for other reasons)
  - g. IUP Transfer Tax (*IUP de Transmissão*) (3% of transaction value)
  - h. Formation of “Propriedade Horizontal” (condominium complex)
  - i. *Justificação Notorial* (procedural process to formalize title when prior sales deeds are missing)
  - j. *Justificação Administrativa* (procedural process to formalize title when prior sales deeds are missing)
  - k. Initial Registration in the new cadastre – not suggested as a source of revenue and cost recovery, since this may impede full cooperation by title-holders in its creation. This fee was waived in most cases for the four islands under the MCC compact. It is recommended that this approach be extended to the other islands as well.
2. Recurrent Fees & Taxes
- a. Annual IUP Property Tax (formula based on parcel area for vacant land and built area for developed parcels)
3. Routine Information Requests (including official Certificates)
- a. Issuance of a CIP (*Certidão de Identificação Predial*) or Cadastral Identification Certificate, which will presumably replace the municipal tax registry certificate (*certidão matricial*) and the legal registry certificate (*certidão de registo predial*).
  - b. Official copies of “escrituras” (deeds) related to property sales
  - c. Title, mortgage and lien searches by title-holders
4. Value-Added Services (VAS)
- a. Mortgage and title searches requested by third parties. Cabo Verde will need to decide whether or not to restrict class of eligible persons who can request information, due to privacy concerns.
  - b. Demographic statistics, including mapping and spatial information
  - c. Title Insurance (potential service discussed further below)
  - d. Land and property market data to help inform investments (information on commercial and residential space, including property price information trends).

- e. Address-based and location-based data and searches (including technical assistance for street naming and address numbering where such does not exist, i.e. toponymy)
- f. Linkages with planning authority data sets and investment promotion agencies

The government would retain statutory control over most fees but probably not the VAS. The fees currently charged for some of the above core procedures are indeed significant. The following are some examples: 15200 CVE (approximately \$152) for an *escritura publica de compra e venda*; 24700 CVE (approximately \$247) for legal formation in the public notary of condominium complex; 43000 CVE (approximately \$430) for partition of property in the public notary; and 21000 CVE (approximately \$210) for recordation in the *registro predial* of most transactions such as sales, partitions, condominium formation. It may even be possible – and advisable – to reduce some of these costs to the public, since at their current levels they tend to discourage the formal recording of transactions. Issuance of official certificates is, as expected, much less expensive, typically on the order of \$6.

The private partner would expect to receive a significant percentage of such fees, at least until cost recovery was achieved. PPPs can take a variety of approaches to concession length. The private partner could, for example, be open to a structure whereby the length of the concession might be conditioned on (audited) cost recovery and a predetermined return on investment, after which the registry/cadastre would be turned back over the Cabo Verde authorities. Alternatively, the length of the concession period could be a fixed period (based on an estimated return on investment, in the 15 to 20 year range) with optional renewal periods.

The revenue to which the private partner would be entitled under the PPP could be broken out into two parts: (a) recovery of the cost (and reasonable return) for the investment to complete the cadastre on the other islands; and (b) cost recovery (and reasonable return) for the operation phase of the land registry. The percentages of the fees taken by the private partner could be adjusted downwards after cost recovery of the first phase noted above.

The private partner would also be interested in exploring financial risk mitigation measures. These could include a bond or other form of guarantee so as to secure the private partner's investment in the event that performance was satisfactory, but, for example, the revenue stream did not materialize in the anticipated timeframe through no fault of the private partner. In some PPPs, the government partner itself agrees to a formula whereby a private partner's cash shortfalls will eventually be covered if demand for services is less than both parties assumed in their contract negotiations. Another approach may be to seek external

financing for the capital investment phase (completion of the cadastre) from a development bank, including the IFC, under terms in which the loan could convert to a grant (or at least to more flexible repayment terms) if the revenue stream did not reach anticipated levels.

The next step for determining economic feasibility would need to incorporate projections based on estimated volumes of parcels and transactions, and estimated costs. As noted earlier, a very rough estimate of the total number of *predios* in Cabo Verde is in the range of 250,000 to 300,000. The authors are currently attempting to make a more refined projection based on our experience in Sal and available data from the other islands. If we use a 6% estimate for transaction turnover rate and use 250,000 as the base number of *predios* (both figures on the more conservative side), we could have as many as 15,000 transactions a year. Fees would be generated for all the various procedure noted above. However, if we look only at the *registro predial* recordation fee, currently at \$210, it would yield more than \$3.1 million annually at the transaction volume just noted.

In terms of cost, a rough projection to complete the regularization phase might estimate 200,000 *predios* (property units) remaining to be inserted into the cadastre. It should be able to complete the work on the other islands be at a significantly lower cost than it did on Sal, because many of the costs incurred in Sal related to establishing the procedures and IT platform for the operation. Annual “operation phase” costs would also need to be calculated, and projections would heavily depend on the choices and issues discussed in the sections below. If Cabo Verde is interested in pursuing the PPP approach, the next step would necessarily involve a rigorous cost and revenue analysis.

### **The IT Platform & Governance**

The new cadastre and integrated land registry services are being built on an IT platform designed and maintained by NOSi, originally a government agency that itself is undergoing a privatization process, having become a government-owned company in 2014. During the past several years, NOSi has created the LMITS system for the creation of the cadastre, and the LMITS-2 system, for maintenance of the cadastre and recording transactions in the cadaster and related registries. The systems are closely integrated with Cabo Verde’s advanced e-governance network.

The approach adopted for the IT platform would be a key factor in the potential success of the PPP. Given the need for close integration with the GoCV’s other databases and systems that are run by NOSi, both on

a national and municipal level, the different roles and responsibilities of the private partner and NOSi would need to be clearly defined.

The possible approaches would include:

- A) GoCV (via NOSi) maintains LMITS and core services. The private partner would provide registration data to LMITS (NOSi) and have its own application server providing services based on the LMITS data model. This approach requires active cooperation with NOSi and comprehensive agreements on data sharing and the provision of services. GoCV is still responsible for core land administration services and associated costs.
- B) GoCV (via NOSi) maintains LMITS to provide connectivity with other GoCV systems (Note that all GoCV systems connected by NOSi are based on a common basic architecture). However the private partner has the primary databases and essentially supplies data to NOSi and LMITS – both base data and updates. Here the land administration services are managed through the PPP.
- C) The private partner takes over core responsibility for LMITS and the responsibilities for future data management and further development, as well as all services associated with land administration and related services. This option broadly relieves GoCV of all costs associated with land administration and NOSi would have a governance role rather than an active role.

Under options A and B, NOSi could be a partner within the PPP, even with a potential revenue stream from the sources outlined above. However, the private partner would insist on being a senior partner with NOSi in the ongoing design, redesign, and maintenance of the LMITS systems. NOSi and the private partner would have to define their respective performance and resource responsibilities with regard to LMITS.

It is important that the responsibilities for data management and service provision are elaborated and agreed at an early stage of negotiations, because that will dictate the structure and services the PPP can provide as well as the cost/revenue model.

### **Defining the Private Sector and Public Sector Role in the Operation Phase**

As already noted above, the PPP would need to define the services the private entity will directly offer to the public and what services will be retained by public entities. In the example mentioned above of a PPP for building a hospital, we noted that the private entity may sometimes be limited to providing ancillary services in the operation phase, excluding the provision of the core medical services (though in one notable instance in Lesotho the private party is providing the health services too). Similar decisions would need to be made here.

In the context of a PPP for land administration in Cabo Verde, it is clear that the private entity would be responsible for the systematic regularization work to create the cadastre on the non-Compact islands and complete any unfinished work on Compact islands. But what about the post-regularization work, i.e. the concession period in which the critical revenue stream will be generated? The private partner would presumably take responsibility during the concession period for a portion of the work that today is provided by the MoJ's *Cartorio*, the MoJ's *Conservatória*, and, for certain functions, the municipal "Camara." (Some of the staff of those institutions may be hired by the private entity to perform services during the concession period. It is interesting to note that it was a requirement of Teranet's contract with the Manitoba government that Teranet accept a transfer of the Property Registry staff into its own team). In the Cabo Verde context, the private partner would almost surely seek to streamline and combine certain legal steps involved in land transactions. For example the *Cartorio's* (Notary's) sales deed could be combined with the *Conservatória's* recording of the change of ownership in the *registro predial*.

Perhaps the most sensitive and complicated aspect of negotiating a PPP in the Cabo Verdean context would be to define to what extent a private company would directly handle procedures such as the execution of a "escritura publica de compra e venda," a public sales deed, currently managed exclusively by the MoJ's *Cartorio* (public notary). Would the private entity only manage the behind-the-scenes data processing, or would the private entity directly interact with members of the public, approve the documentation, issue the sales deeds, and proceed with recordation in both the cadastre and *registro predial* (the latter step being a function of the different MoJ *Conservatória* entity)? We recommend that the private entity be involved in all steps of the process, even if some aspects are performed under supervision of a light government presence.

There will also be the need for close coordination with many other government entities, whose actions are necessary for successful registration of property rights but whose functions go beyond the mere cadastre and land registry. In fact, this is true even within the *Cartorio* and *Conservatória* offices, which handle many processes that are not directly related to the land registry. (For example, the official determination

of a deceased's heirs is critical for registration of land rights and is handled by the *Cartorio* – but that procedure is not solely related to real property. Declaration of a deceased's heirs pertains to rights in many other assets, such as businesses, vehicles, or real property in other countries. As such, it is a process handled by the *Cartorio* that would presumably *not* be handled by the land administration PPP).

Within the municipal Camara offices, the functions related to land administration and taken over by the private PPP partner would likewise need to be carved out carefully from functions retained by the Camara. In some instances, such as land sales or land use permits, the line between the private and public entity may be a fine one to draw. Such processes would presumably combine personnel from both parties.

### **Performance Standards and Guaranteeing Title**

The PPP contract would have to define performance standards by which the private party could be held strictly accountable, with financial penalties for non-compliance. While it may be more straightforward to define performance standards for PPPs in the infrastructure sector (it is relatively uncomplicated to inspect tunnels, roads and bridges for being built to specification and for retaining quality during subsequent years), it is also possible to define performance standards in the land administration sector. During the initial regularization phase (creation of the cadastre), the private partner can be held to targets for completion time, accuracy (as spot-checked by third-party quality control), and IT system performance (down time, response time). The Operation Phase can be held to targets for transaction times (for example, time lapse between a user request and subsequent execution of sales deed and recordation in *registro predial*), information request times (issuance of certificates and title searches), and customer satisfaction surveys. Clear governance structures would be set forth in the comprehensive contract documents of the PPP as well as potentially in authorizing legislation.

In terms of accountability to the public, the private partner should be held liable for mistakes caused by poor performance or negligence. If, for example, a property owner has to incur costs to correct a title mistakenly registered in someone else's name due to fault on the part of the PPP private partner, than the property owner or "titular" should be able to recover such costs from the private PPP partner. One interesting possibility for an ancillary "value added service" offered by the private PPP partner would be insurance guaranteeing title on a no-fault basis, similar to title insurance commonly available in the U.S. and other deed-based law systems (or by government itself in certain "Torrens" title-based registry systems). Such a value-added service could be particularly attractive to investors looking to develop

vacant or under-utilized property, for tourism or other entrepreneurial purposes. We envision this as a guarantee for which an additional fee, determined and set by the private partner, would be charged.

### **Legal Framework**

In the current implementation of the cadastre, the Compact-supported legal reform makes specific mention of a private “Entidade Executante” in the Regime Especial law to perform certain normally public functions under the authority of the appropriate government entity. In fact, the MCA contractors were licensed by the INGT to perform their roles in the creation of the cadastre on Sal, within the framework of the Regime Especial. This sets a good precedent for private sector involvement in Cabo Verde’s cadastre. A broader legal delegation of authority would be necessary to permit the more extensive role discussed in this concept note, via a new law, or in amendment(s) to current law(s), governing the cadastre, the Notary and the Registo Predial.

### **Conclusion**

We believe that the conditions in Cabo Verde may be favorable for implementation of a PPP for the completion and maintenance of the cadastre and related land registries. The relatively small size of the country represents on the one hand a relatively low transaction base to provide cost recovery, yet on the other hand represents a manageable size for a PPP covering the entire country, as opposed to merely certain provinces or regions. The modernization of the cadastre under way with MCC funding provides a good head start that can facilitate the transition into the PPP, with the private partner taking advantage of the significant investment during these past years in legal reform, regularization on several islands, standardization in regularization policies and legal approaches to formalizations, communications with the public on the new cadastre (not to be underestimated) and an IT platform that, while not perfect, may provide a foundation for new or improved systems.

As noted above, Cabo Verde has already created a unit within the Ministry of Finance (MoF) to promote PPPs, presumably reflecting the government’s desire to explore how this structure can be effectively deployed. The *Cadastrro Predial* and related registries provide a promising sector to explore such innovative approaches. The MoF’s PPP unit, along with MCA (given its deep knowledge and experience gained in this sector), could facilitate discussions and negotiations, in coordination with other GoCV stakeholders in the potential PPP discussed in this note. These other entities would, at a minimum, include the MoJ, the Camaras (municipalities), INGT, NOSi and Patrimonio (title holder of state property). It

would also be advisable to engage and involve non-government actors (lawyers, real estate developers, and surveyors, for example) to gauge their reaction to such a proposal.

If Cabo Verde is interested in further pursuing this prospect, then the next step could be a discussion with government of the parameters mentioned above, the aim being to narrow the various options and define a favored approach. Based on those discussions, potential private partners could present a more detailed proposal, both financially and technically.