

# Insights and Commentary from Dentons

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## OVERVIEW OF THE GUIDELINES FOR EXTENSION AND RENEWAL OF LEASES

### 1. Introduction

The Cabinet Secretary for the Ministry of Lands and Physical Planning in consultation with the National Land Commission (the “Commission”), has issued Guidelines for the Extension and Renewal of Leases (the “Guidelines”) under Gazette Notice Number 5734 of 2017. Before delving into the details of the Guidelines on this notice, it is important to remember that section 13(1) of the Land Act sets out a general provision requiring the Commission to send a notice of expiry of the lease to a lessee through registered mail within five (5) years before the expiry of the leasehold tenure and other general provisions without setting out the details of how to go about the process. These Guidelines are meant to provide the detailed procedure for extension and renewal of leases contemplated by section 13(2) of the Land Act. The Guidelines set out the process for both extension and renewal of leases. We shall analyse the two processes in turn:

### 2. Extension of leases

#### 2.1 Notice of expiry of lease

The Guidelines outline various steps that have to be taken to ensure the lessee has been given the expiry of lease notice within five (5) years before the expiry of the lease as required under section 13(1) of the Land Act. In view of this, the Guidelines require the following:

- a copy of the notice to also be forwarded to the Cabinet Secretary or the relevant County Government;
- the notice should also indicate the person to whom the application for extension should be made;
- publication of the notice on two newspapers of countrywide circulation if the lessee does not respond to the notification within a year;
- a physical verification by the Commission to establish the status of the land if the lessee does not respond to the notice sent by registered mail or published on the newspaper; and
- if after verification, the Commission establishes that the lessee or his/her family are in occupation of the land, advise on the need to apply for extension before the expiration of the term and the consequences of not doing so.

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## 2.2 Application for Lease Extension to be made to Commission by the registered owner or appointed administrator

The application for extension of the lease shall be done by the lessee or appointed administrator to the office of the Commission within the respective land registration unit. The applicant should attach the following to the application:

- copy of the Identification Card/Passport or Certificate of incorporation (in case of a company (We presume of the registered owner of the lease);
- letters of administration and confirmation of grant where applicable;
- current official search (obtained at least within one month);
- passport size photograph (We presume of the registered owner);
- in the case of a company, the names of the directors and their citizenship status including a search from the Registrar of Companies showing the shares of each director;
- clearance certificate from the relevant authority in relation to all land rates and rents;
- information whether the title to be extended will be subject to any existing encumbrance(s); and
- proof that the lessee has complied with the terms and conditions of the existing lease.

Upon receipt of the application, the Commission shall within seven days forward it to either the representative of the Cabinet Secretary or the County Executive Committee Member for lands, if the land is vested in the National Government or County Government respectively, for approval.

## 2.3 Consideration of the economy and the national development goals and objectives

In instances of large scale investments, the National or County Government shall ensure that the extension is beneficial to the economy and the country as whole and that the investment is in accordance with the national development goals and objectives.

## 2.4 Consultations with other relevant offices

The National or County Government shall before the approval of extension of the lease, seek representations from the County Executive Committee Member responsible for land, the County Government Surveyor, the County Government Physical Planner, the Land Administration Officer of the Commission and any other relevant authority.

## 2.5 Approval or rejection of the application

After the representations, the application for extension of the lease may be:

- (a) approved for a specified term; or

- (b) declined and the reasons given within ninety days (90) from the date of the application for extension. Such reasons shall be limited to;

- where the National or County Government needs the land for public purpose. The National or County Government shall give the leaseholder a notification of at least three (3) years before the expiry of the lease of the intention not to extend lease and copied to the Commission, where the National or County Government needs the land for public purpose; and
- where there is proof that the lessee has not complied with the terms and conditions of the existing lease.

Where the extension of a lease is declined by the National or County Government, the aggrieved applicant may refer the matter to an independent appeals committee established by the Commission.

Where approval of extension of the lease is granted, the Commission shall have the land revalued to determine the payable land rent and other requisite fees, have the land re-surveyed and geo-referenced and have the lessee surrender the existing title or lease certificate in consideration for a new lease.



### 3. Renewal of Leases

- Where the term of the lease had expired without prior notice to the lessee as noted in the previous section, the Commission will require the lessee to apply for renewal of the lease.
- The application should be addressed to the Chairman of the National Land Commission. The application should be accompanied by the same documents as those required in the application for extension including also the original lease to confirm the status.
- The Commission shall before the renewal of a lease, seek representations from the County Executive Committee Member responsible for land, the Director of Surveys, the Director of Physical Planning,

the Land Administration Officer of the Commission and any other relevant authority.

- Where favourable comments/recommendations for renewal of the lease are received, the Commission shall have the land revalued to determine the payable land rent and other requisite fees, the land re-surveyed and geo-referenced and issue a new letter of allotment in a prescribed Form for the parcel and a new lease shall be issued in accordance with the provisions of the Land Act, 2012 and these Guidelines.
- Where the renewal of a lease is declined by the National or County Government, the aggrieved applicant may refer the matter to an independent appeals committee established by the Commission.

For any further information regarding the guidelines, please write to your usual contact at HH&M or contact the following:



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