

WHAT HAPPENS WHEN A DEED OF FIXED PERIOD STATE GRANT EXPIRES? CONTINUED... **- (One Seikano, Associate)**

A Deed of Fixed Period State Grant (herein after referred to as “FPSG”) provides real rights to the property and the Grantee of such property is given all rights of ownership for a period of ninety-nine (99) years for residential properties and usually fifty (50) years for commercial properties.

With the first FPSGs being issued in the early 1960’s, the fifty-year ownership period for some of the Grantees if not most has lapsed, resulting in the following questions being asked: What happens now? Are the Grantees given an option to renew their tenure or does the land automatically revert to the State? Will there be compensation?

This has been a major concern for property developers, uncertain of their rights as Grantees at the end of the FPSG. The Government of Botswana appears, at least from a policy perspective, to have adopted a policy on how to deal with these FPSGs. This policy has, however, not yet been promulgated as law.

One Seikano, our conveyancing Attorney, attended a consultative meeting organised by the Ministry of Land Management, Water and Sanitation Services? The aim of this meeting was to address questions pertaining to the expiring FPSGs. One compiled a summary of the questions raised as well as the Ministry’s respective feedback;

What are the options given to Grantees?

- Firstly, the Grantees may apply for renewal of their grants for a further fifty (50) or ninety-nine (99) years, whichever one is applicable.
- Secondly, where the Grantee elects not to renew their grant, the FPSG shall terminate on the date of expiry and all rights and title shall revert to the State together with all the developments therein.
- Thirdly, where the State elects not to renew the grant, the holder shall be entitled to compensation. It was not discussed how the compensation will be determined and there is no condition dealing with this in the current FPSGs.

Under which circumstances would the Grantee be entitled to compensation?

- A Grantee will only receive compensation in the event that the Grantee applies to have their FPSG renewed and for whatever reason, the State elects not to renew their grant. This goes to say that if the State rejects a Grantee’s application for renewal, the Grantee will be entitled to compensation for the developments on the property, however, if the Grantee allows the FPSG expire, they will not be entitled to compensation and the land together with the developments thereon will revert to the State.

How and where do Grantees apply to have their FPSG renewed?

- Our assumption is that the Grantees will have to fill out forms and submit the required documentation at the Lands Department in order to renew their grants. They would then be issued with a new grant that would contain the new conditions and amendments made to the terms and conditions of the existing title deeds.

Even though the efforts of the Government in passing this policy are appreciated and noble, we would highly recommend that the above be passed as law and that Government formally outline the process to be followed when wanting to renew a FPSG, as well as if a Grantee claims compensation, how this compensation will be determined.