

BENCHMARKING LAND REGISTRATION

Diarmuid Clancy
Property Registration Authority, Ireland

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SUMMARY

Benchmarking is recognised as having a key role to play in improving public sector performance.

A number of studies and reports have been undertaken that define and compare various aspects of land registration. These include the Multilingual Thesaurus on Land Tenure of the Food and Agriculture Organisation of the UN, the Glossary of Terms for the European Land Information Service (EULIS), the UN ECE Land Administration Guidelines and the Inventory of Land Administration Systems in Europe and North America of the UN ECE.

Both the value of benchmarking land administration and the associated challenges were identified by FIG. These challenges were also implicitly recognised in the European Competitiveness Benchmarking Report of 2004. Benchmarking is required in the public sector to mimic the effects that competition has as a promoter of efficiency in the private sector.

The World Bank tables on doing business include measurement of three areas on registering property. These are the number of processes, the time taken and the cost. It is questioned whether these are always the relevant factors. It is also suggested that there may be inconsistencies in data supplied for the tables and ambiguities in the manner in which registration processes are described. Additional criteria for more effective evaluation of land registration are proposed.

It is suggested that efforts are required to advance benchmarking and that it is a necessary exercise for a variety of reasons, including the evaluation of economic performance, the stimulation of innovation, the convergence of information and registration systems and the promotion of universal standards of good land administration. A possible roadmap for benchmarking is outlined.

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1. BACKGROUND

“Necessity is the Mother of Invention”
- Plato

Benchmarking, as we know it today, began in the USA during the 1970s. Its purpose was to improve the competitiveness of US industry over its Japanese rivals. In recent years, China has emerged as an economic superpower, not alone on the basis of labour abundance but also in the area of technology. The EU has recognised a need to develop a strategy based on strengthening its productivity, innovation and competitiveness to meet China’s challenge and to take advantage of emerging growth opportunities.

Tools for benchmarking were developed to improve performance by identifying best practice through learning from others and, in so doing, to stimulate innovation and to gain a competitive edge in a rapidly changing and evolving business environment.

At EU level, the importance of competitiveness was given recognition with the establishment of a dedicated Enterprise Directorate General. Erkki Liikanen, as EU Commissioner for Enterprise and the Information Society, highlighted the importance of benchmarking for the public sector in the year 2000 when he asserted that *“Benchmarking has a key role to play ... by providing a mechanism for identifying world-wide best practice and for learning from it.... I am determined to promote benchmarking as a central instrument for improving the quality of policy implementation. ... Benchmarking can play a valuable role in helping public sector organisations identify and share best practice.”* In Ireland, benchmarking is commonly used in the health sector and in pay determination for public sector workers.

Stuedler and Williamson observed in 2002 that *“there are no internationally accepted methodologies to measure and compare the performance of land administration systems”*. The United Nations Economic Commission for Europe (UNECE) Land Administration Guidelines of 2005 state that *“the efficiency, integrity and transparency of the land administration system must be constantly measured and monitored, through performance indicators relating for example to the time and cost of each transaction, and consumer satisfaction”*. In this regard, the World Bank has developed a widely recognised “league” table on registering property in different countries, which is based on three criteria, the number of procedures involved, the time taken and the cost. This table, in turn, feeds into the World Bank economy rankings for ease of doing business.

2. WHY BENCHMARK

*“Why should we put ourselves out of our way to do anything for posterity;
for what has posterity done for us?”*

- **Sir Boyle Roche (Grattan’s Parliament - pre 1801)**

Land registration (and land administration) straddles the public and private sectors to varying degrees in different jurisdictions. It often operates through partnerships with the private sector, such as through public private partnerships, outsourcing or direct access. Nevertheless, control and regulation of land administration falls within the sphere of the public sector and its operation is generally a public sector function within the EU.

Within the private sector there is a harsh “evolutionary” imperative for improvement and innovation in that if a business is not competitive then it ceases to exist. This survival mechanism does not exist for monopolies operating within the protected government sphere, such as land administration. Benchmarking provides a framework for the public sector to mimic the effect that competition and the marketplace has on the private sector.

The general perception of the public sector is that it eschews radical change and, as a part of the machinery of government, is inclined towards the status quo in supporting stable administration and continuity in the provision of public services. Radical measures are often precipitated by a crisis. Planned change within the public sector tends to be gradual and with an overriding concern for risk management. Land registration is typical of the public sector in that it is a creature of legislation and has a culture that is risk averse. For these reasons, there are compelling arguments for critical analyses of the effectiveness of land registration both by reference to generic frameworks of key performance indicators and by way of assessment against international comparators.

3. UNDERSTANDING OURSELVES AND OTHERS

“O wad some Power the giftie gie us to see oursels as ithers see us!”

- **Robert Burns**

Different systems for recording land-based information have evolved among the countries now within the European Union and across the world. These systems have evolved to suit the particular laws and institutions of each jurisdiction. There are marked differences in many countries in the manner in which the administration of the registration process is undertaken. At the same time, there are also many similarities in the systems that support the registration of real property in each jurisdiction. An impetus towards convergence is driven by factors such as, information and communication technologies, the liberalisation of financial markets, re-engineering of land registration systems, the challenges of sustainable development, equality, dealing with cultural diversity and the demand for land

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registration information on a cross border basis such as through the European Land Information Service (EULIS).

The Bathurst Declaration on Land Administration for Sustainable Development concluded that: *“Land administration institutions and infrastructures will have to evolve and adapt their often inadequate and narrow focus to meet a wide range of new needs and technology, and a continually changing institutional environment. They also need to adapt continually to complex emerging humankind-land relationships at the same time as changing relationships between people and governments. These conditions should lead to improved systems of governance”*. One of its recommendations was to *“Undertake analyses and develop performance indicators that can monitor the effectiveness of land administration and land tenure systems in relation to sustainable development and poverty alleviation.”*

Land registration can be broken down into the standard strategic framework of policy, management and operational. Responsibility for policy lies at legislative/government level and encompasses the broad ranging issues under the umbrella of land administration; responsibility for management operates at board and senior management level and responsibility for operations rests with departmental management. Benchmarking can be used at all levels but the most detailed and structured data can be obtained at management and operational level. This is because land registration, by its nature, is process driven and results oriented.

A hurdle to be overcome regarding policy is that, as mentioned above, land registration systems have evolved to suit the particular laws and economic conditions of each jurisdiction. While these systems are not always homogeneous or seamless in nature, they generally support complex interdependent frameworks. In a sense, land registration threads to other government agencies and the economy at large by filigree that is often difficult to discern. Benchmarking land registration policy requires us to consider framework conditions and demands a broader analysis of outcomes for the economy as a whole; this cannot be accomplished by evaluating land registration in isolation.

4. BENEFITS OF BENCHMARKING LAND REGISTRATION

“Utopia is the Mother of all Progress”

- Oscar Wilde

Stuedler and Williamson, in scheduling the benefits of benchmarking, claim that *the benefits in benchmarking land administration can be quite extensive:*

- *facilitating cross-country comparisons in land administration performance;*
- *providing a basis for comparisons over time;*
- *demonstrating strengths and weaknesses of land administration systems;*
- *justifying why a country should improve its land administration system and identify areas/priorities for reform;*

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- *helping to draw links to other issues and sectors (financial, governance, environmental, social, etc.);*
- *justifying an investment to improve;*
- *monitoring improvement.*

To this list, I would add that benchmarking is a catalyst for innovation and re-engineering and is a driver for the promotion of universal standards for good land administration.

5. COMMON TERMINOLOGY AND THESAURUS

“When I use a word, it means just what I choose it to mean- neither more nor less”

- Lewis Carroll - Humpty Dumpty in Alice in Wonderland

A pre-requisite to undertaking benchmarking is to know what is being benchmarked. This may seem self-evident to the point of tautology but can give rise to problems when comparing concepts in different jurisdictions. When account is taken of language differences and a variety of legal systems, such as exists within the European Union, the issue becomes more complicated.

Globalisation and the universality of governance regulations have transformed world markets to the extent that there is a common understanding of the terminology of business processes. As a result, benchmarking can operate relatively seamlessly on a trans-global basis within the sphere of business. This is not the case with land administration, which operates at jurisdictional level and inherits terminology that is often peculiar to the particular jurisdiction being evaluated. The joint COST Action G9 and FIG Commission 7 workshop of December 2004 on standardisation in the cadastral domain found that *“One of the big problems in the cadastral domain is the lack of a shared set of concepts and terminology. International standardisation of these concepts (that is, the development of an ontology) could possibly resolve many of these communication problems”*.

An example of the effort required in this area is the work involved in defining “Parcel” by the working group for the Cadastral Parcel in Spatial Data Infrastructures and INSPIRE.

Quite an amount of effort has been put into developing a single thesaurus for land administration. The Multilingual Thesaurus on Land Tenure of the Food and Agriculture Organisation of the United Nations (Edition 2003 edited by Gerard Ciparisse) sets out a comprehensive thesaurus of terminology. It sets out definitions structured into seven chapters based on:

1. Players, resources and rights
2. Elemental descriptions of space
3. Political, procedural and practical tools/terms of the land
4. Land information systems: Services and tools of public land administration

5. Tax and economic terms in land
6. Non-state systems of land administration
7. Land in an agricultural, pastoral and forestry context.

The European Land Information System (EULIS) now has ten members and provides access to land and property information in six participating European countries. One of the key requirements for developing a single portal was to develop a glossary of terms to enable professional users in one country to understand concepts and legal terminology in other participating countries. On-line reference information from each participating country gives the following details:

- The registration process
- The land transaction process
- The mortgage process
- Common terminology
- The roles and responsibilities of authorities in the land transaction process
- Translation of terminology into languages of the participating countries.

The glossary of terms operates by stating a EULIS concept; providing a definition of each concept; providing a national synonym of that concept and providing a national description of the concept, for example:

Glossary of Terms			
Concept (EULIS)	Definition (EULIS)	National synonyms Ireland	National description Ireland
Freehold	Full Ownership	Fee Simple	Where the tenure (title) of property has the capacity to last forever as distinct from leasehold which is for a fixed term of years. On new folios the letter F after the number indicates freehold. This is the same as the fee simple. This is the most extensive interest that a person can have in land.

A publication of significant value in developing an understanding of other land registration systems and as a driver for convergence is the Inventory of Land Administration Systems in Europe and North America produced by HM Land Registry on behalf of the UN ECE and edited by John Manthorpe. It sets out a statistical analysis of a range of features under various headings. These are:

- Key features of land registration systems
- Key features of cadastral and topographical mapping systems
- Key features of land use recording systems.

A more detailed free-form textual outline of key services and attributes is also contained in the inventory. This is not a benchmarking exercise, per se, but it could be regarded as a precursor to benchmarking.

In measuring performance, a question to be posed is whether data should also be assessed against notional measures of best practice or purely on a comparative basis. It might be possible to adopt the Inventory and the Land Administration Guidelines as starting points for the development of notional performance benchmarks of best practice.

6. COMPARING COMPETITIVENESS AND DEVELOPING A VISION IN THE PUBLIC SECTOR

“We know what we are but know not what we may be”

- William Shakespeare (Hamlet)

Robert C. Camp cautioned that *“Invariably, organisations want to start with data. Most requests, therefore, start with a need for performance benchmarks, data that will allow the organisation to measure the gap between its performance and others. – But the shortcomings of measures are well known. They tend to be financially dominated and historically based. They provide little in the way of prediction. They almost never tackle growth creation, innovation and learning”*.

The European Competitiveness and Benchmarking Report of 2004 states that *“Difficulties in the measurement of public sector output as well as the lack of internationally harmonised data often inhibit comparisons of public sector productivity across countries”*. The report sets out methodological issues in the measurement of public sector productivity.

“The most important issues in the measurement of the efficiency in the production of public services are:

- *How to define output (output vs. outcome, gross output vs. value added, number of activities vs. deflated expenditures);*
- *How to define aggregate output over a range of different products;*
- *How to incorporate exogenous conditions (such as the general health condition of a patient) in the valuation of efficiency.*

Conventional productivity measurement relates outputs to inputs. The intrinsic problem in the measurement of public sector productivity is the lack of information on the market value of the output”.

Measuring land administration activities requires broad ranging participation, which is essential if outcomes are to be properly addressed. On the other hand, the data for the

measurement of land registration activity alone is more readily available because of the process orientation of land registration. An issue with this approach, however, as identified by Camp, is that it may only provide data on existing performance. It also fails to encapsulate a broad evaluation of land administration. This is required to obtain an all embracing view required to incorporate external factors in order to predict future trends, stimulate innovation and evaluate economic, social and marketplace requirements. This would include an evaluation of environmental factors, taxation, the marketplace, the financial sector, urban planning, social and affordable housing, sustainable development and infrastructure, land management, heritage, equality, poverty, cultural diversity and all matters appertaining to the “business” of land and property. An obvious example of this is the development of a spatial data infrastructure, such as envisaged by the Infrastructure for Spatial Information in the European Community Directive (INSPIRE), as distinct from separate information silos dealing exclusively with the information maintained by each agency.

7. BENCHMARKING TOOLS AND APPROACHES

“Productivity is being able to do things that you have never been able to do before”
- Franz Kafka

Common Assessment Framework (CAF)

It is not possible to undertake benchmarking in isolation. By definition, at least one other comparator with related activity must also participate and must adhere to the same principles for assessment if the data is to be meaningful. The Common Assessment Framework (CAF) is a free tool for self assessment that was developed by the Innovative Public Services Group at the instigation of EU Ministers and Directors General in the field of public administration. CAF is designed to be a simple model for self assessment to get an initial impression of how the organisation performs. It affords an opportunity to compare results on an anonymous basis with other comparable organisations. CAF also offers an opportunity to identify suitable benchmarking partners.

CAF has four main purposes:

1. To capture the unique features of public sector organisations.
2. To serve as a tool for public administrators who want to improve the performance of their organisation.
3. To act as a "bridge" across the various models used in quality management.
4. To facilitate benchmarking between public sector organisations.

Possible limitations to CAF are that it is not customised for land administration and, as we know from our experience with land registration, voluntary participation in schemes without incentives has a poor success rate.

World Bank

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The primary focus of the World Bank relates to commerce and, accordingly, its approach to benchmarking is directed towards business. Essentially, the World Bank attempts to measure and compare three components of land registration. They are the complexity of the systems, the speed of service delivery and the cost of doing business. These criteria do not (and, presumably, are not intended) to address the more detailed evaluation at enterprise level proposed by Camp. Neither are they intended to address a 360 degree evaluation of land administration covering the full spectrum of societal issues as envisaged by Steudler and Williamson and adverted to at 6 above. However, the data on land registration is supported by other measurement tools employed by the World Bank in the sphere of commerce that are also applicable to the “land business”. Key indicators in this area are governance and anti-corruption. Indeed, the World Bank includes the following quotation on its website.

Everybody now knows that the quality of governance is vital for development. But how does one measure performance on governance and compare it across countries and over time? The World Bank governance indicators are the definitive answer to these questions.”

Martin Wolf,
Chief Economics Commentator, Financial Times

The governance indicators of the World Bank are across six headings and they are:

- Voice and accountability
- Political stability and absence of violence
- Government effectiveness
- Regulatory quality
- Rule of law
- Control of corruption

The enforcement of the rule of law is a cornerstone of all civilized societies; without which, we have anarchy. To that extent, governance and anti-corruption are prerequisites to the establishment of effective land registration. There is no benefit in having a validly documented title if another party can force you out of your property and you have no recourse to justice. For that reason, business investors are more likely, in relative terms, to be concerned with the governance rating of a country than with the effectiveness of its land registration system.

8. OBSERVATIONS ON THE WORLD BANK TABLES

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“Less is More”
- Ludvig Mies van der Rohe

Essentially, the World Bank tables are summary data and are indicators of performance that is a platform for further enquiry. However, there may be risks in interpreting the tables as having absolute values.

Status and quality of the source data

The tables are constructed from responses received from different countries. There is no evidence of external involvement in the preparation of the source data and it would not appear to have been tested through an independent validation process. Neither is it indicated if the source data is subject to external audit or peer review. This raises questions about the consistency of the source data. It also poses a potential for differing interpretations or massaging of data to present more favourable positions of agencies or countries. Accordingly, the tables may require a “health warning” on their reliance for comparative purposes.

For instance, the registering property index for Columbia is ranked ten places above Ireland and ninety places above France. Yet, in Columbia the rural Land Registry does not function, the Land Registrars have been murdered and real estate records have disappeared or been burnt. It is difficult to see how this can be reconciled with the ranking given.

Another example is Sudan, which is ranked at 32. This is higher than Ireland, Denmark, France, Hong Kong, Germany and many other countries with effective systems of land registration. Yet the United Nations mission in Sudan has expressed deep concern over the forced removal of 12,000 persons from Darfur and the value of the land registration system is questionable. These facts speak for themselves as regards the ranking given.

Key requirements for any system of land registration are the security it provides, confidence in the integrity of the system, and transparency and impartiality of the processes. Without them, there is no benefit in having a system of land registration. These measures are not incorporated into the World Bank evaluation.

The criteria for the tables relate to a building for a buyer to use or expand a business, to use as collateral or to sell to another business. It is also presumed that no additions or renovations are required. This does not incorporate the majority of transactions, especially the purchase of houses or land for the construction of houses. Indeed, even as regards businesses, it is likely that the majority either lease premises or need to alter them in some way. Accordingly, the tables exclude the vast majority of transactions on land and probably only represent a figure of less than 1% of transactions for many jurisdictions.

Number of Procedures

It is axiomatic that reducing the number of procedures generates simplicity and efficiency. Nevertheless, there is a limit to the level of simplification that is effective. In the words of Einstein “*Everything should be made as simple as possible, but not simpler*”. A question is what is the optimum number of procedures, whether by reference to the particular needs of the jurisdiction or as an ideal or base model to serve as a benchmark. The tables are constructed on the assumption that one procedure is the optimum and this now appears to have attained a currency within land registration circles. Obviously, if a figure lower than one is achieved, then there is no system. As a corollary, on what basis do we then presume that a number greater than one is a weakness? Is there a risk that a disproportionate emphasis on reducing the number of procedures could lead to an erosion of the integrity and security of registration?

In common law jurisdictions conveyancing operates on an adversarial system where the principle of *caveat emptor* applies. Registration of title is designed to protect purchasers rather than owners. Also, the obligation rests with the purchaser’s solicitor to make the necessary enquiries of the vendor’s solicitor. This differs from many civil law systems where the parties agree the sale and conditions through an independent statutory official and the vendor has a duty of disclosure. As a result, comparison of procedures between the common law and civil law systems is like comparing apples with oranges.

Another question relates to the objective of the World Bank assessment. If all of the procedures can be delivered through a single e-enabled service delivery portal, it would seem to be immaterial what number of stages is involved, providing they are delivered efficiently and meet the requirements of all stakeholders.

There are apparent inconsistencies in the assessment and description of the number of procedures. Are they to rate the registration process or are they to map the steps required to purchase a property and obtain clear title and possession?

Generally, in common law jurisdictions, the purchase of a property subsequent to any pre-contract deposit and enquiries or surveys, is as follows

- Contract stage (i.e. agreement between the vendor and purchaser)
- Investigation of title and requisitions
- Execution of Deeds, closing, payment and possession
- Payment of stamp duty
- Registration of Transfer and Charge (if any) in the Land Registry
- If it is a new property, there will be additional phases involving planning permission and building agreements (although this is not a feature for the World Bank tables)

It could be stated in many countries that the registration process is only one or two procedures yet that would not take into account all of the procedures required to purchase a property.

Time

An issue to be considered in evaluating data is its relevance to purpose. A factor that may be critical in one country may be of minimal significance in another. Such factors would include whether registration is compulsory and whether priorities are dependent on the time of registration as distinct from the time of application. In a registration of title system, it is generally immaterial to priorities when the registration is made as the priority is conferred as of the time of lodgement of the application. On the other hand, some deeds systems are time dependent and priority is conferred as of the time of actual registration. In such a case, the length of time taken to register would be a more critical factor in obtaining clear title.

Another more fundamental issue is the relative importance of the registration function to the purchaser or, in the context for which the World Bank tables are intended, for business purposes. The critical measure of importance for a purchaser is the length of time from initial purchase agreement to the time that possession with clear title is obtained. In Ireland, the crucial period is typically the time from signing the purchase agreement to the signing of the transfer deed. The purchaser obtains the beneficial interest with effect from the date of the execution and delivery of the deed and can occupy the premises immediately. Essentially, if the purchaser can rely absolutely on the information contained in the register and can trust the solicitor and the registration process, then there is no concern about a registration delay. As a result, in the vast majority of cases, a business purchaser has little or no interest in how long subsequent to gaining possession that it takes to register the deed.

In a number of countries, there are conditions precedent to concluding an agreement to purchase. An instance would be if a purchase is conditional on the sale of another property. In such a case, it could take a number of months before all parties agree terms for a number of linked sales to proceed and the purchase can be concluded, after which the documents can be lodged for registration. Consequently, there may be uncertainty and a potential for open-ended delay or frustration in concluding a purchase.

Another issue relates to conditions subsequent to purchase. An example would be a right of first refusal by the local municipality. A consequence would be the potential risk, after the conclusion of the purchase, of delay before clear indefeasible title could be obtained.

It is suggested that, in addition to the time required to register, other more important criteria for the purchase of property are the availability and reliability of the information contained in the land registry/cadastral and the time required to obtain an indefeasible title.

More Information?

It may be possible to extend the level of indicative data assessed by the World Bank. Additional data would give greater granularity to an evaluation process and reduce the

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risk of ambiguous findings. The fewer the number of evaluation criteria the greater the risk of unbalanced data and a lopsided view of relative performance. On the other hand, if an excessive amount of data is gathered, the evaluation and comparison process becomes unworkable. Additional headings for evaluation by the World Bank might include:

- Speed of delivery of information services
- Range of information available to professional users
- Coverage of registration system
- Availability of identified key information services on-line
- Availability of registration services on-line
- Time taken to obtain clear indefeasible title
- Time taken from agreement to purchase to obtaining possession
- Fees and taxes payable on purchase
- Fees and taxes payable on sale
- Annual taxes and service charges
- Security of registration
- Accuracy rating

It should be pointed out that these criteria are not intended to address a full enterprise level benchmarking of land registration and are merely to improve the finding of the World Bank.

9. CONCLUSIONS AND RECOMMENDATIONS

“A cynic is a man who knows the price of everything and the value of nothing”

- Oscar Wilde

Comparing land registration in different countries poses problems of interpretation as adverted to earlier. Nevertheless, it is recognised that there is a need to develop tools and methodologies to compare the efficiency, reliability and cost of land registration across different countries. This is required for many purposes, including:

- Evaluation of the performance of an economy for inward investment
- Assessment of the performance of government enterprises against policy objectives to ensure that the citizen is getting value for money
- Stimulation of innovation
- Driver for convergence of information services and registration systems on a cross jurisdictional basis
- Measurement against and compliance with universal principles of land administration

Benchmarking is a continuous process and requires a significant investment of effort by all parties. The challenges of reaching agreement on the measures to be applied cannot be underestimated.

- Benchmarking land registration across all countries needs a champion or organisation to drive the process.
- Most likely, it would benefit from a formal accreditation mark to support the process.
- Benchmarking must be supported by a common understanding of concepts, clear methodologies and weightings for balanced evaluation.
- Benchmarking requires audit processes to safeguard the validity and accuracy of the data and give confidence in the outcomes.
- The UN ECE Land Administration Guidelines and the Inventory of Land Administration Systems in Europe and North America might be used as a platform to develop a set of key performance indicators or generic benchmarks for land registration.
- One route to success is to start small and build large (i.e. an incremental approach).
 - The first steps might be to build simple models with neighbouring countries that have comparable systems of land registration. This could be supported by the development of a forum for exchange of information, evaluation of findings and consideration of the modalities for exchange of comparative data. There is an initiative in this regard between England and Wales, Scotland, Northern Ireland and Ireland and a working group has been established.
 - A second phase of benchmarking could extend to full enterprise level comparators.
 - In conjunction with other stakeholders, benchmarking could eventually incorporate a holistic review of land administration, of which land registration forms a key part.

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BIOGRAPHICAL NOTES

Diarmuid Clancy is a Deputy Registrar in the Property Registration Authority, Ireland. He has been head of operations in the Land Registry and Registry of Deeds since 1994. Diarmuid is a solicitor and worked as a lawyer in the Land Registry prior to 1994. He is chairperson of the boards of a number of major projects currently underway in the Property Registration Authority. These include the digital mapping project, the electronic registration project and the decentralisation of part of the Land Registry.

CONTACTS

Diarmuid Clancy,
Property Registration Authority,
Four Courts, Chancery Street,
Dublin 7,
IRELAND

Tel. +353 1 8048094

Fax. +353 1 8048074

E-mail: diarmuid.clancy@prai.ie

Website: www.prai.ie