



Institution of Surveyors of Kenya

Regulation of Land Sector Professionals in Kenya Nairobi, February 2020

EXECUTIVE SUMMARY

1. Challenges in the Current Regulation of Land Sector Professionals

Land sector professions in Kenya, including land survey, estate agency, valuation, building survey, geospatial survey and engineering survey are regulated by three professional bodies namely the Land Surveyors Board, the Valuers Registration Board and the Estate Agents Registration Board, leaving areas like Geospatial Survey, Building Survey and Engineering Survey unregulated. These boards hold statutory authority to set and maintain standards for entry into the various professions, including registering of members who meet set qualifications to practice as a land sector profession. The main aim of this regulation is to protect the public from harm by professionals and illegal practitioners and ensure the best professional standards for the various survey practices.

There have been challenges, failures and limitation of regulation necessitating a review of current regulation of land sector professions in Kenya, to propose a more effective and efficient model of regulation that will redeem and enhance reputation of the various professions and improve public trust in the professions and the regulators. They include the following:

- Loss of money and property by the public due to fraudulent land and real estate agency practices;
- Growing number of unqualified and unregistered persons involved in the sale of land and letting of property;
- Undertaking of land surveying activities by unqualified or unregistered persons, resulting inappropriate, inadequate and illegal submissions;
- Mistreatment of tenants by unprofessional property agents and managers;
- Inaccessibility of land related complaints mechanisms by the public; and
- Lack of support by regulators on growing numbers of registered persons besides enforcing set standards of practice.

2. Initial Response to the Challenges by the Institution of Surveyors of Kenya (ISK)

The Institution of Surveyors of Kenya, being the primary professional association for land sector professions in Kenya, has been at the forefront towards development of effective and efficient regulation of land sector professions. It has made efforts to review existing regulations and adopt an effective regulatory model. ISK has undertaken various activities in an attempt to fill some of the gaps existing in the current regulatory system, for examples:

- Entrenchment of professional ethics through enforcement of various disciplinary measures;
- Improvement of competence and fitness to practice by proposing the establishment of the ISK Training Institute;
- Addressing statutory ineffectiveness, through review of existing acts including a Surveyors Act, Valuers Act, Estate Agents Act; and
- Formulation of new bills for regulation of the land sector professions including the Valuers Bill, the Land Administration Manager's Bill and the ISK Statute Bill.

In order to strengthen regulation, the Institution of Surveyors of Kenya has proposed self-regulation of land sector profession, as opposed to government regulation under which the various professions are currently being regulated. The Institution of Surveyors of Kenya has also proposed consolidation of regulatory responsibilities under it through a consolidated ISK Statute, currently a bill, that would grant self-regulatory authority to the Institution of Surveyors of Kenya, define the regulatory structure of land sector professions under ISK, including role and powers of government, role and authority of ISK, role of members of the profession, as well as the position of existing regulatory bodies in the proposed new self-regulation framework.

3. Objective of the Study

Section 1 and 2 of this Executive Summary gives the context of this study, aimed at contributing to development of a more effective regulatory framework for land sector professions in Kenya. The overall objective of the study is to conduct research so as to *inform review of the ISK Statute Bill, including review of the suitability and practicability of self-regulation of land sector professions in Kenya.*

4. Approaches by the Consulting Team

The consulting team conducted research so as to provide a clear understanding on self-regulation and its suitability for regulation of land sector professions in Kenya by ISK, inform review and changes in current statutes, including the ISK

Statute Bill for effective regulation of land sector professions in Kenya, as well as develop a clear and practicable self-regulation model for the land sector in Kenya.

The consultants conducted online survey amongst the entire membership of ISK (about 4,000) receiving some 104 responses by the time of writing this report. Further, telephone interviews were conducted with 270 members of ISK. Key informant interviews were done with 15 people, drawn from various regulatory boards, chapter leaders, university lecturers, and representation of firms. The consultants made presentations to the ISK Council and three ISK chapters, namely Land Surveyors, Valuation and Real Estate Chapters, where more than 600 people were reached. Presentations had earlier been done to the entire ISK community, reaching over 600 people. Feedback on draft reports continues being given through an online platform targeting the entire ISK membership. This approach to sampling gives the consultants a confidence level of 98% of the findings.

The consultants also conducted literature review covering the various statutes and proposed bills, review of peer professions in Kenya and internationally, and to learn how models of self regulation has been applied elsewhere.



Fig. 1: Consultative Meeting with the ISK Council, the Consultant held 4 such meetings (in Mombasa, Naivasha and 2 in Nairobi)



Fig. 2: Consultative meeting with the Valuation Chapter in Nairobi (the Consultants met various chapters and also the entire ISK, where about 600 people attended)

5. Key Insights from the Study on Regulation of Land Sector in Kenya

The consultants found out that is very possible (in Kenya and internationally) for a membership organisation to work as statutory organisation with regulatory and statutory responsibilities. One example is the Law Society of Kenya, a statutory body established vide an Act of Parliament the Law Society of Kenya Act No. 21 of 2014. It is responsible for setting, maintaining and improving standards of professional competence, professional conduct and training, promoting public confidence in the legal profession and promoting growth of the profession and professionals. It works together with other statutory bodies, e.g. the Council for Legal Education and Kenya School of Law (Kenya School of Law Act No.26 of 2012 and Legal Education Act No.27 of 2012). It also works with various state offices, e.g. the Office of the Registrar, the Office of the Chief Justice and the Judicial Service Commission.

Another example we present in this report is the Institute of Certified Public Accountants of Kenya (ICPAK). It is also a membership organisation entrenched in the statutes through the Accountants Act 1978. It's role is to promote competence and standards of accountants and certified secretaries professional practice. The Act also establishes an independent examination body, the Kenya Accountants and Secretaries National Examinations Board (KASNEB). It was noted that establishment of KASNEB improved levels of academic and professional competence, providing more opportunities for continuous professional development in the profession, as well as platform for research. The Act also establishes the Registration and Quality Assurance Committee, which is the statutory registration and licensing body for accounting and auditing professionals in Kenya.

In both instances, LSK and ICPAK, the separation and interdependence of the various regulatory entities has promoted efficiency of each entity, as well as accountability of one entity to the other. This has also ensured appropriate human and financial resources and greater accountability to government and the public generally. In both cases title protection is also well done.

Internationally consultants observed that Australia has individual boards for each of the survey disciplines and a Surveyor General's Office, in each of Australian territories. The boards and the Surveyor General's Offices are responsible for registration of individual professionals. Further, the regional membership bodies come together into a statutory umbrella body, the Surveying & Spatial Sciences Institute (SSSI), representing the interests of surveying and spatial science professionals, including: surveying, engineering & mining surveying, cartography, hydrography, remote sensing and spatial information science, in the entire country. The body deals with cross cutting regulatory issues, policy issues and advise to the national government.

Another self-regulating body is the Royal Institute of chartered surveyors (RICS). Like SSSI, RICS brings together all surveyors together under the same umbrella. It is a statutory body ran by members. It draws its regulatory mandate through a Royal Charter. It is run through boards and committees, e.g. the Regulatory Board, the Management Board and the Audit Committee. Individual survey professions operate through Professional Groups that are part of the management structure of RICS. Professional Registration and licencing is done for 18 professional categories. RICS is also unique because it international reach.

6. Current State of Regulatory System in Kenya

The current regulatory system for land sector professionals is inadequate and ineffective, with a number of weaknesses. It does not provide for registration of all land sector professionals, with only three boards currently for over seven professional categories thereby leaving a gap. Disciplinary action and dealing with unlicensed practitioners remains a challenge. The system is fragmented and inefficient. The mandate of ISK in regulation is also weak. The following are some of the key findings from the study that are elaborated further in the report:

- The current regulatory system is very weak and for some category of surveyors, as note earlier, there is no regulatory system altogether. This needs to be addressed.
- For the regulated surveyors the boards have been unable to deal with professional misconduct and illegal practitioners;
- The examination component is quite good save for land surveyors, who noted that despite high pass rates in professional exams only a limited number of candidates present themselves for professional examination and subsequent registration;

- Members felt that there is need to deal with the fragmented system of regulation; therefore the recommendation is to move towards consolidation of regulations.
- The individual boards were seen to be weak both from a human and financial resource perspective; yet they remained the best spaces for development of individual professions;
- ISK already plays a role in all the three statutory boards, and also have many other statutory responsibilities through different Acts of Parliament; it was unanimous that this should be consolidated in an ISK Statute.

7. Suitability of Self-Regulation of Land Sector Professionals in Kenya

This study shows that a model of self-regulation can address most of the gaps found out in the study. Absolute self-regulation through ISK Statute presents the following challenges:

- How does one resolve popularly elected officials and effective enforcement of professional ethics and conduct? The study shows that this is a common problem in professional self regulation;
- How is the public protected in the case where the professionals are also the regulator? Again the study shows that in practice professional bodies can even do better than government in promoting and protecting public interest, e.g. in the case of Alberta, where the public are not only represented in the boards but an online feedback mechanism is available and accessible to the public.
- What is the role of government in the self-regulation arrangement given the huge role that various laws and statutes give government on land management? This is a question that the consultants had to deliberate at length with both the regulators, academics and the ISK.
- The existing statutes also create other offices, that are outside of the professional space, e.g. Director of Survey's Office, Chief Valuer's Office, County Surveyor's Offices, Officers of the National Land commission, etc. These offices operate beyond the self-regulatory space and have major implications in the proposed structure of self-regulation.

From the foregoing, the study proposes a model of self-regulation, through co-regulation. This will enable ISK to play a significant role in regulation, while enabling government to have a say on regulation of land professionals, including protection of public interest. In this instance ISK will nominate almost all the officers appointed to the different boards and the Minister will formally appoint them as is the practice. The Minister will appoint specific individuals to protect public interest. The interest of the government will be protected through state officers who sit as ex-officio members of the boards. This model will also ensure that the existing statutes and the offices they create within government are protected. Besides, officials felt that land matters are sensitive and critical both to the government and the public, thus any proposal that suggests that this will be regulated solely by professionals is likely to get very limited support from the

government, the politicians and the general public. These have informed the regulatory model proposed in this report

We learn from international case studies and the local ones (regulation of lawyers and accountants) that there is need to separate the education and examination aspects from registration and annual licencing of professionals and matters of daily professional practice. This enables the education board to have the time, the human and financial resources to undertake training, professional examinations and relevant well thought through curriculum development. They are also able to support, in some cases help accreditation of university courses. Although some members felt that removing the examination and training functions from current boards will deny them much needed resources, it enables better capacity to deliver quality in this area and frees the boards to focus on issues around registration, issuance of annual certificates, regulating day to day professional practice, dealing with illegal practitioners and developing and enforcing code of professional conduct, amongst other aspects of professional development and regulation. Further, there are opportunities for the boards to raise finances through the regulatory processes.

We also learn that there is need to protect the identity of specific professions, yet bring them together through an overall regulator, e.g. the Royal Institute of Chartered Surveyors (RICS). It is clear that all members of ISK, in their various shades will be referred to us “Surveyors” upon passing their professional exams and being registered. The title “Surveyor” will need to be explained and protected in statutes.

8. Proposals for Regulating Land Sector Professionals in Kenya

The study proposes a three-pronged approach to regulation of land sector actors in Kenya:

- a) Retention and expansion of individual regulatory boards;
- b) Establishment of an independent umbrella Education and Examination Board for all the surveyors in Kenya; and
- c) Establishment of Institution of Surveyors of Kenya as a statutory body.

8.1. Retention and Expansion of Individual Boards

The study shows that there is still need for specialised individual boards. The individual boards will have the responsibility of registration, annual licencing, enforcement of professional code of conduct and ethics, disciplining professionals for professional misconduct, dealing with illegal practitioners, etc.

It is recommended that the existing three boards, namely: the Land Surveyors Board, the Valuers Registration Board and the Estate Agents Registration Board, be retained and the statutes creating them be revised in line with the new regulatory regime proposed in this study. New Boards be established under separate statutes to regulate Geospatial Survey, Building Survey and Engineering Survey.

The roles of these boards to include, inter alia, registration of professionals on recommendation from the surveyors Education and Examination Board – SEEB (explained next), annual licencing of professionals, supporting day to day practice, dealing with professional misconduct and dealing with illegal practitioners (quacks). It is not envisaged that the boards will get much more allocation in terms of financial and human resources from government so it makes sense that their roles be relooked at and where possible be shared or given to other more relevant bodies. Further, the board funds needs to be explored so that they are better resourced. Membership to the boards should be generally based on nomination by ISK and appointment by the Minister.

8.2. Surveyors Education & Examination Board – SEEB

The study notes that education and examination is one of the strong areas partly because of the role of ISK in the same. There is need to safeguard this. Further, to overcome the challenges noted in education, e.g. quality of CPDs, standards and recommendation of new specialisation categories, it is recommended that an umbrella Surveyors Education and Examination Board (SEEB) be established that develops curricula for all survey professionals and conducts examinations. This board will work closely with the individual registration boards and the ISK. The Board will recommend candidates for registration having met the professional threshold established by the board. It will develop curricula for professional examination; conduct professional examination for purposes of registration and conduct continuous professional development (CPDs) among others. Working with other institutions, e.g. commission for University Education, the board will also advise institution of higher learning on training requirements of various categories of professionals and ensure their continuous training once registered. It is envisaged that SEEB will be constituted as follows:

- Each professional category / chapters of ISK to appoint 2 persons to the Education Board;
- Representatives of universities that teach survey disciplines, who are members of ISK, to be nominated by ISK and appointed by Minister;
- A Chairperson to be elected by members and formally appointed by the Minister.

8.3. Institution of Surveyors of Kenya

The consultants note that members overwhelmingly recommended that ISK play a key role in the regulation of land sector professionals. ISK is already playing a central roles in this:

- ISK nominates to the three boards of the Land Surveyors Board, the Valuers Registration Board and the Estate Agents Registration Board;
- ISK conducts continuous professional development (CPDs) and public awareness campaigns;
- ISK coordinates all survey professionals through it's the ISK's Council and various ISK chapters; and
- ISK has been given many statutory responsibilities, including appointing people to the ad-hoc committee for boundaries pursuant to the Urban

Areas and Cities Act 2011 and National Land Commission, pursuant to the National Land commission Act 2012, etc.

To safeguard the roles of ISK in the statutes, it is highly recommended that ISK be transformed into a statutory body that will, inter alia do the following:

- Execute various statutory responsibilities already bestowed on it by various Acts of Parliament;
- Execute its responsibilities in the various regulatory boards through nomination of relevant persons for the different boards;
- Execute its mandate in the proposed Surveyors Education and Examination Board;
- Provide policy advisories to government agencies on issues to be addressed through all survey disciplines; This role will be modelled along LSK and ICPAK as highlighted earlier.