

## **Issues arising from privatising the operation of a public register**

**Sjef van Erp, Professor of Civil Law and European Private Law, Maastricht University**

In this paper it will be argued that four types of privatisation can be distinguished. First of all, certain registers were, although in part dependent upon public registers, private from the outset: registers informally maintained by title insurance companies or established by the financial industry as a parallel register (Mortgage Electronic Registration Systems Inc. in the US). Secondly, land information is going through a transition process from being conceived as almost equal to the physical object described (land, houses etc.) towards a de-physicalised object by itself ("data"), which can be traded on markets. Governments quickly realised the financial opportunities by beginning to market the information both directly or indirectly, the latter by creating financially independent, although still public, registration entities, which then started to act as if they were private (profit making) registries to reach their budgetary targets. Thirdly, recent IT developments and particularly distributed ledger technology require that if a land registry wants to transform into an advanced fully digitalised and block chain based system, it is almost unavoidable that IT companies specialised in this type of software development and transition are involved. The ensuing process is so complicated that, in fact, the IT company in part becomes the controller ("owner") of the information in the land registry. In other words: de facto privatisation flowing from contractual arrangements between a government and a private company. Fourthly, some governments have even gone so far as to completely privatise the register by selling it to, e.g., an investment fund. By doing so they capitalise the cash flow to be expected from increased marketing of data. Such an investment fund may then, in its turn, sub-privatise the register by contracting with an IT company to introduce distributed ledger technology.

These developments raise various types of questions, but in this paper the focus will be on, what seems to me, the two most essential questions: Who in a privatised land registry "owns" the information and what does it mean to "own" information? Is the government (or the government agency) the owner, is it the holder of the parallel register (e.g. MERS), the IT company or – almost to be forgotten – the citizen whose object, after all, is the basis for any information in a land registry?