

REAL ESTATE AND CONSTRUCTION

CURRENT SITUATION

New Law on Construction is adopted bringing several important changes. This law is determining conditions and modalities for spatial organizing and planning, development and use of construction land and building construction, supervision of law provisions as well as other issues of importance for spatial planning, construction land development and use and building construction.

Law on construction foresees legalization of properties built without permits till the moment of law adoption with certain exceptions listed in the Law (for example: properties built on protected natural and cultural lands or properties built on public area etc.). This law is very complex since it makes an impact on five very important fields: spatial planning, construction, urban construction land, restitution and legalization, which could cause problems in law implementation and acting practice.

One of the most important innovations of this law is transformation of land usage rights into ownership rights over construction land. Companies that gained the land in the past (under privatization, bankruptcy or execution procedures, or based on previous construction land regulations until 13 May 2003) will be able to transfer the usage rights into ownership rights by paying a fee representing the difference between market value of construction land and costs for acquiring the land rights. New law should also make possible introduction of ownership over construction land after 60 years.

An important change is that the construction permit will be transferable, meaning investor is entitled to concede the construction land and/or object under construction together with construction permit to somebody else under simple administrative procedure.

The law foresees the establishment of Investors registry as a data base of all investors with the goal of preventing manipulations in real-estate and construction market.

The competencies of civil inspection are enlarged, with rights to immediately stop construction in case of incomplete documentation or possible danger to public safety.

All municipalities will have to adopt Urban and spatial municipality plans in a time frame of 18 months, the dismissal of municipal parliament is provided as a penalty for municipality's omission. The plans have to be digitalized and available to citizens.

Land ownership and real-estate

Current economical situation with its constant pressure to the companies' liquidity as a consequence of growing numbers of non-collectable claims, accounts blockades and illiquidity of companies, as well as neglected obligations to small entities by the state, trading chains and other large and powerful entities influenced real-estate sector. Even though that the first impact of the global economical crisis was overcome due to the high market dependability on local and specialized real estate investors and developers and highly capitalized banking sector, complete market recovery can only be expected as a result of entrance of prime investors that could supply large-scale projects to the market which should be highly stimulated with the changes in the real estate regulations.

Urban construction land that was to remain the sole property of the Republic of Serbia now can be transformed into ownership under the terms prescribed by the new Law on Construction.

A large number of real estate properties in prime locations in Belgrade and in other cities remain under municipal ownership and are leased, but not according to prevailing market conditions. This discourages quality retailers from entering the market. It also contributes largely to the grey economy and reduce revenues to the budget. There is also a large number of other real estate properties which could be taken over through the privatization process of the companies in possession.

Management and Maintenance of residential properties is in the same status from 1995 when the existing law was adopted. Since then no significant changes were made. The Law on Management and Maintenance of residential properties foresees models of residential management with no professional management (volunteered service on amateur basis performed by president of house counsel) but does not obligate residential owners to implement them. General

way of organizing is still cooperation with public communal companies with possibilities to engage privately owned enterprises for specific works.

Construction

New Law on Cadastre was adopted in August 2009 which will enable more efficient state measurement and creation and maintenance of real-estate cadastre. Law defined the basic principles of cadastre based on European model of land books and other real-estate cadastres with the goal of more transparent and precise records introduced in real-estate cadastre.

Cadastre Project in Serbia is still not finished. Several municipalities in Belgrade (Novi Beograd, Stari Grad, Vračar) finished cadastral land registry system but this process needs to be completed as soon as possible.

Incomplete land books and other land-related records are indisputably a key problem in this area, contributing to the existence of irregularities in a process of obtaining property rights.

Process of construction permits acquiring is still non-transparent, long and bureaucratic, primarily as a consequence of difficult and time consuming process of collecting all documents needed for application (notably the documents related to the rights to land).

Restitution

Law on Restitution is still not drafted with promise of state government to prepare the draft proposal by the end of 2009 latest.

The priority of restitution is grounded in its tremendous potential for promoting security of property rights in a symbolic and exemplary manner, since it most clearly shows that the state is returning what it unjustly took away.

Real estate leasing

For the time being, there is no legal framework for Real Estate Leasing in Serbia. Existing Law on Obligations provides only a basis for pure renting of premises without allowing leasing structures. Throughout the entire CEE region Real Estate Leasing has proved to be a flexible and attractive tool for financing office, retail and industrial real estate investments.

Both operate and finance lease structures are suitable to finance new investments or refinance existing real estate and thus provide liquidity to companies. As such Real Estate Leasing is supportive in creating new dynamics in real estate investments whilst granting good security to financing institutions.

POSITIVE DEVELOPMENTS

In regard to the previous year when the general remark on this subject was that very limited progress has been made in the last two years, in 2009 the biggest change was the new set of laws pertaining to the real-estate sector (Law on Planning and Construction, Law on Cadastre and State Survey, Law on Social Housing) adopted in Parliament end of August. Even though it is too early to analyze its future influence, which depending on its implementation and acting in practice, new set of laws could be a major breakthrough for real-estate market. This area is very sensitive, especially regarding restitution and its comprehensive regulation in line with current international legislation and practices is essential for the continuing creation of a favorable and attractive investment and business environment.

Land ownership and real-estate

New reformed law is adopted, and the process of land acquisition permits several possibilities. It is necessary to wait for the drafting of all indispensable associated by-laws which will upon adoption completely define the conditions and procedures regarding transfer of existing land under usage status in the ownership status.

Mortgage Law 4 years ago has introduced a possibility that a construction permit is re-issued following the foreclosure of a mortgage on a semi finished structure to the name of its acquirer. However such a possibility diverged from the previous Law on Construction, which insisted that the identity of the investor must be maintained throughout the construction venture which is now changed with the new law with transfer possibility.

New Law on Cadastre is adopted with very important clause that every property entering the cadastre should have also the evaluation of its value. This is opening the possibility to regulate and organize this process through adoption of rules

and procedures by State with methodology of mass and single evaluations.

Instead of presently preferred type of land rights - lease of construction land, the new Law on Construction introduces possibility for an investor to gain ownership rights under the terms prescribed in the Law.

Construction

The overall provisions on acquiring permits according to the new Law on Construction simplify this process but this has to be proven in practice.

New Law on Construction prescribes that construction permit can be transferable, meaning investor can concede the permit to somebody else in case of renouncement of commenced construction.

The construction industry (construction companies) slowly shifts from previously predominantly state-owned to the privately-owned.

Several Municipalities which have established "one-stop" information offices for foreign investors which improved previous issue of needed data inaccessibility due to lack of information and/or unskilled staff.

Restitution

The new Law on Construction influences also the restitution issues. The main idea behind it is that the owners of the properties should gain the ownership over land. Previous owners of the land where no properties are built will obtain ownership rights and in case when the property exists, the owners should probably be compensated from the Restitution Fund.

REMAINING ISSUES

Land ownership and real-estate

After several months long and successful public debate end of 2008 and beginning of 2009 with number of ratified suggestion from interested parties, the government adopted the modified proposal of the new Law which was to implement several completely new legislative solutions on which the interested parties did not have possibilities to give any feedback. This new draft of Law on Construction was sent to Parliament by urgent procedure without proper public debate and no systematic evaluation of its effects on citizens and companies and actual possibilities for its implementation and acting. As already mention, it is necessary to wait the implementation of the new law in practice in order to give the proper comments on its future influence on real-estate market.

Municipalities failed to deprive state-owned construction land from investors, in cases where users haven't constructed a building within the arranged period of time.

Minimum prices of the majority of urban land remains determined through and by Governmental ordinances instead of the market. Moreover, prices differ among municipalities as a consequence of fact that local regulation is vague with imprecise procedures for determining fees for leasehold and site permits.

New Law on Construction foresees also legalization for properties constructed before determination of plans for certain areas, when construction permits were not issued or demanded. Depending on how this law will be implemented some property owners in rural areas could end up in situation of project preparation, filing legislation demands and similar on one side and with their difficult economical situation on the other side. On the other hand some properties are not even built according to the today's standards which could even lead to the procedure for its demolition. It remains to be seen how this law will be implemented in practice.

Clearly defined penalty policy is still not provided for competent local authorities regarding cases of non performance or untimely performance of their authorities (obligations).

No significant improvements have occurred in the previous years regarding residential properties management and maintenance. Law on Management and Maintenance of residential properties from 1995 foresees adoption of by-laws for further regulation of this field but non of those were even drafted until today (legal act on residential properties maintenance from 1993 is still in power).

Financing of residential properties maintenance consider contracts with public communal companies regarding corrective maintenance and emergency services and arranged organized money collection for investment maintenance which in practice is often impossible to implement.

Construction

The overall process of acquiring permits remains in 2009 non-transparent, long and bureaucratic, primarily as a consequence of difficult and time consuming process of collecting all documents needed for application.

The Cadastre Project, funded by the World Bank is still not completed in Serbia. The project should be finished in 2010 but most probably the deadlines will be breached.

Cadastral land registry system for several municipalities in Belgrade (Novi Beograd, Stari Grad, Vracar) is almost finished and available, but the overall process needs to be completed as soon as possible since incomplete land books and other land-related records are indisputably key problem in this area, contributing to the existence of irregularities in a process of obtaining property rights.

Even though several municipalities have established “one-stop” information offices for foreign investors, the problem with inaccessibility of needed data due to lack of information and/or unskilled staff still exist.

Restitution

No significant improvements have occurred in the previous year, having in mind substantial achievements made in previous years (Law on Mortgages, Church Property Restitution Law etc.). Law on Restitution should be prepared and adopted as soon as possible. The State government promised to draft the law proposal latest end of 2009 which should be imperative since this law is awaited since year 2000.

Previous projects of new law on privatization of construction land, presented during 2007, were giving priority to restitution in kind over sale but the new Law on Construction foresees practically all compensation in money.

Restitution processes of land titles in past has shown a significant level of inconsistencies and irregularities across the nation, with many situations in which recognition of the right is either unreasonably delayed or, even granted to present owners of structures instead to former owners.

Real estate leasing

Leasing legislation should provide the possibility of finance lease and off-balance operate lease, favorable for companies' debt/equity ratios.

FIC RECOMMENDATIONS

- New Law on Construction makes an impact on five very important fields: spatial planning, construction, urban construction land, restitution and legalization. All these fields should be separately regulated through systematic by-laws as soon as possible;
- State government and relevant Ministries should draft and adopt all necessary by-laws and issue clearly defined instruction to the local authorities regarding implementation of new Law on Construction as soon as possible;
- Authorities should be called to introduce transparency and consistency in work on all levels and to conduct higher

level of monitoring and work of all relevant institutions;

- Permits issuing process should be further simplified and Land Development fee together with other construction start up cost should reflect possibility to decrease existing and later operational cost with the goal of further market expansion and speeding up and bringing more investments on this market;
- Penalty policy in the Law on Construction should be re-designed;
- Law on Restitution should be drafted latest end of this year and adopted after public debate beginning of 2010. The extent of reforms made in other sectors demand putting in place a Law with clear and transparent process of restitution of construction land, which would lead to a just and efficient system of land titles and add up to the predictability of the market;
- Law on Cadastre is adopted and its implementation should speed up Cadastre project completion and make real-estate market more transparent;
- New Law on Managing and Maintaining of Properties should be also drafted latest beginning of 2010 and adopted after public debate. It is necessary to have complete legislative regulations and by-laws for definition of residential owners rights and obligations regarding management and maintenance which are indispensable for proper functioning of residential properties management and maintenance;
- State should draft Law on Real Estate Leasing harmonizing it with other Laws being closely connected with Real Estate business;
- Dialogue, communication and long-term cooperation should be built between the state, relevant ministries, local authorities and all other important institution on one side and FIC with its Real-Estate Committee and other organization dealing with real-estate on the other side on strategic issues with the goal of improving real-estate market in best interest of all.