

REFORMS FOR ECONOMIC GROWTH AND BUSINESS RESILIENCE 2022

REAL ESTATE COMMITTEE



AMCHAM SERBIA
A LEADER IN CHANGE

REAL ESTATE COMMITTEE

OBJECTIVE 1: DEVELOP A DIGITAL SPATIAL PLANNING SYSTEM

...BY INTRODUCING AN ONLINE SPATIAL PLANNING SERVICE

CHALLENGE: The production of spatial and urban plans, which designate intended land uses and prescribe building requirements, is a major bottleneck for property development in Serbia. If all procedures are followed to the letter, it takes at least six months to enact a detailed zoning plan, with general zoning plans requiring at least one year. However, due to inefficient communication and co-ordination between the relevant authorities, adopting these plans often takes years.

Serbia currently boasts good planning document coverage, but these are in many cases incomplete and require further elaboration by means of plans at greater levels of detail, which property developers quite frequently must finance before being able to build yet lack any certainty as to how long their projects will take to complete. The absence of a single comprehensive and up-to-date register of all plans makes it difficult even for professionals to know exactly what building requirements apply to which zone.

RECOMMENDATION: Establish an online platform (tentatively to be named *eProstor*, 'e-Space') to facilitate the development of spatial and urban plans, documents which determine land use and set out building requirements. This platform would permit institutions to exchange information electronically, make comments, issue building requirements and approvals, and use the online service simultaneously to develop plans instead of having to wait for each to complete its own part of the work in isolation, as is the case now. Linkages between *eProstor* and the National Land Survey Authority (RGZ), which administers the cadastre, would allow easy access to cadastral information required for construction whilst also allowing regular updates to data in the cadastre.

OBJECTIVE 2: EFFECTIVELY RESOLVE OUTSTANDING PROPERTY ISSUES

...BY ABOLISHING THE FEE FOR CONVERSION OF USAGE RIGHTS TO PROPERTY RIGHTS

CHALLENGE: More than a decade from its introduction, the scheme for converting usage rights to property rights at a charge has proven a failure. The government has been able to collect less than 10 million euros in charges, local authorities have on average completed fewer than ten cases each, and, with developers unable to build on land subject to usage rights, significant revenue has been lost in property taxes, stamp duty, construction fees, and especially missed investment. In another obstacle to developers, in 2013 the Constitutional Court ruled that land that has been purchased cannot be converted at a charge if the amount to be charged is lower than the market price of the land since doing so would go against public interest. Lastly, the procedure for waiving the fees is unclear as the legislation does not stipulate exactly which authority is responsible for deciding on exemptions.

Procedural uncertainty is another major challenge with conversion of usage rights, as is the lack of clarity with decision-making powers of the RGZ and local authorities. Issues here include what method is used to assess the conversion charge and which authority has the power to rule on whether requirements for conversion with or without charge have been met, as well as what procedure is used to determine this.

RECOMMENDATION: Amendments to conversion regulations should be considered to remove the conversion charge altogether. The 2013 Constitutional Court ruling does not preclude this solution since the court has not declared conversion free of charge to be unconstitutional. In addition, options for indemnifying investors that have already paid the conversion charge should be explored.

...BY COMPLETING THE LEGALIZATION PROCESS

CHALLENGE: According to the RGZ, more than five million buildings remain unregistered with the cadastre, with more than five million having been constructed without the appropriate building permits. The legalization process has to date failed to ensure existing buildings are regularised and prevent construction of new unpermitted structures. In a bid to address this issue, the government has progressively reduced legalization charges, but this has not resulted in a corresponding increase in legalization applications. This policy has also placed non-compliant investors at an advantage over honest ones and has disincentivised compliance.

Amendments to the 2018 Legalisation Law have introduced additional complexity into the legalization procedure. The changes have limited the window for legalization to five years (expiring in November 2023) and have prohibited transactions involving buildings undergoing legalization, which has threatened the completion of bankruptcies and enforcement actions where debtors' assets were not legalised and have denied legitimate owners the ability to dispose of units in buildings that do not comply with construction permits. Lastly, Article 25(7) of the law prevents legalization permits from being issued for units in residential buildings by prohibiting their regularisation unless the entire building has received planning permission.

RECOMMENDATIONS: The legalization model should be changed to allow all unpermitted buildings to receive planning permission within a reasonable period, prevent unfair competition from threatening compliant developers, and disincentivise and prevent construction of new buildings without planning permission.

The legalization process must be based on the following principles:

1. **Legalization must extend to all unpermitted buildings in Serbia**, regardless of whether their owners or tenants wish to take part in the process.
2. **Conditions under which legalization cannot take place must be prescribed consistently and in detail**, as should the consequences to buildings remaining unpermitted in those cases; these provisions should be implemented efficiently. Digital technologies should be used to create a register of buildings that cannot be regularised and that would automatically be condemned whilst allowing complaints within a statutory period. Owners should pay the costs of demolition, with their movable and immovable property subject to sale to recoup the expenses.
3. **Costs of legalization must be at a minimum equal to or greater than the costs of obtaining planning permission** to avoid giving illegitimate developers an advantage over compliant ones. Applicants that have paid legalization fees under past rules should be exempt from paying any additional charges.
4. **The process should not require any direct involvement by owners or tenants of unpermitted buildings and should not necessarily expose them to immediate costs.** The electronic register would be used to automatically generate legalization permissions that would be delivered to the owners or tenants. If no interested party objected within a statutory period, the legalization permissions would become final, and the system would automatically update the cadastral record. If an objection was filed, the relevant authority would have to discontinue the process immediately and register a dispute or other procedure, as appropriate, before a court or other public authority. The cadastral record would indicate that the owner was required to pay the permitting fee, and payment would be a requirement for allowing any refurbishment or reconstruction of the building or registration of a change in ownership. The fee would be adjusted for inflation for as long as it remained unpaid.
5. **A special unit should be created at the Cadastre** that would play a key role in legalization by managing and co-ordinating local authorities in this process and resolving any particularly difficult issues. **Notaries public should be involved in this administrative process** to reduce the workload of local authorities and their legalization departments. Notaries have the knowledge required to verify compliance with statutory requirements for retrospective permitting before approving any real estate transaction (here, they would check whether the permitting fee has

been paid, review the design documents, and check who holds title to the land). If these requirements are met, the notary would certify the conveyancing instrument and send the information directly to the Cadastre, which would register the change and remove the record of the fee from the file.

6. **The process should be digitalised and clear time limits set for each stage, including for actions to be taken by state-owned enterprises.** To ensure it can be completed in a reasonable period of time, the legalization process must be streamlined to the greatest extent possible, from automated generation of decisions condemning unpermitted properties using an electronic database to mass downloading of property folios and other public instruments/documents, contracting of as-built-state reports for entire neighbourhoods, field visits according to schedule to inspect multiple properties, to production of joint studies for whole neighbourhoods that would be available electronically and could be readily input into electronic databases.
7. Lastly, a long-term **plan to address unpermitted construction** is required that would envisage future steps to reduce building without planning permission to a minimum or eliminate it altogether. In this context, stricter controls are necessary, together with closer co-ordination between state-owned enterprises, to ensure that unpermitted buildings cannot be connected to public infrastructure, including the power grid, water supply and sewerage, and district heating.

...BY SAFEGUARDING RIGHTS GRANTED IN RESTITUTION

CHALLENGE: Lack of clarity in the Restitution and Indemnification Law leads to inconsistent practice by the competent authorities, which can jeopardise rights holders. The Law allows the authorities to make discretionary decisions in the most sensitive cases where interests of multiple parties conflict. For instance, the Restitution Agency has interpreted regulations to hinder or even prevent foreign nationals from having their property restored or accessing indemnification.

In addition, restitution applicants unable to produce the instrument proving their property had been nationalised, as required by law, are unable to access their right to restitution, regardless of any other evidence proving the property had been nationalised.

RECOMMENDATION: The authorities should ensure that all pre-existing rights are safeguarded in accordance with the Restitution and Indemnification Law. Serbian and foreign nationals ought to be treated equally, as provided for by court rulings and decisions of the Ministry of Finance.

OBJECTIVE 3: ENHANCE THE CADASTRE

...BY ALIGNING STATUTORY AND ACTUAL TIME LIMITS FOR ACTIONS BY AUTHORITIES IN THE REAL ESTATE REGISTRATION PROCEDURE

CHALLENGE: Time limits for decision-making on applications for real estate registration are regularly breached due to excessive workloads of cadastre services. There are issues with both first-instance cases where applications were filed in person by applicants before the new law took effect, and with actions taken by the RGZ in second-instance cases.

RECOMMENDATION: Improve efficiency of decision-making, especially for applications not made directly by notaries public and other authorities, especially as individual applicants will be able to file applications in person only until the end of 2020 and enhance oversight to promote compliance with statutory time limits.

Allow notaries and lawyers to verify the accuracy of old instruments before submitting them to the cadastre, since the requirement for the cadastre to verify these documents causes major bottlenecks in the body's operation, at times resulting in delays of several months.

...BY PROMOTING CONSISTENCY AMONGST THE VARIOUS CADASTRE SERVICES

CHALLENGE: Different cadastre services interpret legislation inconsistently and at odds with other laws and regulations.

RECOMMENDATIONS: Provide more transparent and clearer implementing instructions for legislation applied by the cadastre and appropriately train staff to follow them to ensure cadastral procedures become faster and more predictable.

Broaden the range of publicly accessible advisory notices and practices of the RGZ.

...BY UPDATING THE CADASTRE TO REFLECT THE ACTUAL SITUATION IN THE FIELD AND PROMOTING THE RELIABILITY OF CADASTRAL DATA

CHALLENGE: The descriptive sections of cadastral files may differ from the cadastral plans they refer to. Moreover, information available on the online *e-Katastar* service is not always reliable as the data are not updated regularly.

RECOMMENDATION: Link information systems and ensure automatic exchange of information between public authorities and the online *e-Šalter* system.