

SERBIA: REAL ESTATE

The Law on Property Restitution and Compensation¹ - Finally Enacted but Already Threatened with a Constitutional Challenge

With a long delay and pressed by the European Union, Serbia has finally enacted the Law on Property Restitution and Compensation, dealing with property nationalized after WWII. However, no sooner has the ink on the statute dried than it has been threatened with a constitutional challenge by the Hungarian minority in Serbia because of a provision denying restitution and compensation to the members of occupying forces.

Natural restitution will apply to property (immovables and certain movables, such as paintings and other art) currently owned by the Republic of Serbia, municipalities and state-owned companies.

Special rules apply to currently state-owned undeveloped construction land encumbered with the right of use or long-term lease in favor of private investors. The possibility of such land being returned to the former owners is limited to a very narrow set of circumstances. If the holder of the right of use on undeveloped construction land acquired through the privatization process or by purchasing the land in bankruptcy or foreclosure procedure, does not file a request for conversion of the right of use into ownership before 6 December 2011 (and if the conversion is not completed within two years from the filing of the request), undeveloped construction land may be returned to its former owner, provided, however, that in cases where land was acquired by privatization, restitution to the former owner would be possible only if the purchaser accepted that possibility in the sale and purchase agreement. Such situation is unlikely to ever occur. Undeveloped construction land that is encumbered with a long-term lease can be subject to natural restitution only upon termination of the lease. Since current leaseholders have to option to purchase leased undeveloped land, the conditions for restitution in this case will rarely arise.

Developed construction land, which is state-owned, but subject to the right of use by a private investor, is not subject to restitution.

Where restitution is not available, former owners are entitled to compensation payable partly in upfront cash (up to EUR 10,000) and partly in Euro-denominated government bonds. The total cost of compensation is capped at EUR 2 billion (plus interest), while an individual entitlement is capped at EUR 500,000.

Compensation is not available for property destroyed as a result of force majeure or for lost profits. A request for restitution has to be filed with the Agency for Restitution (the “**Agency**”) within two years from the date the Agency publishes an invitation for such requests. The Agency is obliged to render its decision within six months from the receipt of a complete request (in complicated cases, within one year). The decision of the Agency is subject to appeal, while the final decision can be challenged in judicial proceedings.

¹ Law on Property Restitution and Compensation (*Zakon o vraćanju oduzete imovine i obeštećenju*, Official Gazette RS no. 72/2011).

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A final and binding decision on restitution entitles its beneficiary to register ownership on the pertinent assets in the relevant public registry and to claim rights as separation creditor in winding up procedure of the entity holding the asset, while a final and binding decision on compensation entitles its beneficiary to receive cash compensation and government bonds.

The Law on Property Restitution and Compensation is a long awaited piece of legislation. Its key feature is that it strives to correct injustice caused by nationalization while safeguarding the acquired rights. The law is expected to end social pressure coming from the former owners of nationalized property and their heirs and to boost confidence in investors who may have been so far reluctant to invest into companies with assets subject to a potential restitution claim. In this respect, the legislation should be viewed as a positive development.

Full implementation of the Law on Property Restitution and Compensation is expected only after certain important issues are regulated by by-laws (e.g. the form and manner of filing the request for restitution, methodology for determining the value of movable property which is subject to restitution).