

SERBIA: REAL ESTATE

The Law on Public Property¹ - *Public property "push-down"*

Almost five years after the new Serbian Constitution permitted the de-centralization of state-owned assets and their push down from the Republic of Serbia to the municipal level, has the Serbian Parliament enacted the Law on Public Property which regulates the peculiarities of the public ownership regime. The main positive aspects of the Law on Public Property are in that it (i) decentralizes the ownership entitlements, (ii) provides specific rules for use and disposal of public property and (iii) sets the framework for potential public-private partnerships.

Coverage. The Law on Public Property recognizes three types of public property: state-owned property (i.e. property owned by the Republic of Serbia), provincial property (i.e. property owned by the autonomous province of Vojvodina), and municipal property (i.e. property owned by local municipalities, including the City of Belgrade).

Publicly-owned assets. The Law on Public Property stipulates that, *inter alia*, the following assets are under the regime of public ownership:

- (i) Natural resources (water, watercourses and their springs, mineral resources, underground water resources, geothermal and other geological resources and raw mineral reserves, and other goods declared as natural resources by a special law). Natural resources are exclusively owned by the Republic of Serbia, but may be subject to a concession granted to a private investor.
- (ii) Assets of general interest (declared as public property under the law). These include agricultural land, forests and forestry land, water land, water facilities, protected natural assets, cultural assets, certain forms of networks, etc. Assets of general interest are not by definition publicly owned, but even when owned by private investors, they enjoy special protection which imposes certain limitations regarding their acquisition, utilization and disposal. When in public ownership, assets of general interest are state-owned, unless the law explicitly stipulates that they are provincial or municipal property.
- (iii) Assets in common use (declared as public property under the law). Those are the assets which are, due to their nature, intended for use by the general public (public roads, public railways, streets, bridges and tunnels on a public road, streets or railways, squares, public parks, border crossings, etc.). Assets in common use are state-owned, except for (i) 2nd order state roads located in Vojvodina (provincial ownership), and (ii) uncategorized roads, municipal roads and streets (provided that they are not part of highways or 1st or 2nd order state roads), squares and public parks (municipal property). Private parties can acquire right to use assets in common use in accordance with the law, including via concession or lease.

Ownership regime. The general property law applies to public property, unless the Law on Public Property provides otherwise. The most notable exceptions from the general property regime are applicable to natural

¹ Law on Public Property (*Zakon o javnoj svojini*, Official Gazette RS no. 72/2011).

resources, assets in common use, networks in public property, publicly owned water land and water facilities, publicly owned protected natural assets and publicly owned cultural assets, and exceptions applicable to such assets include the following:

- (i) Such assets enjoy immunity from execution;
- (ii) Acquisition of ownership is not possible on such property on the basis of acquisitive prescription (*usucapio*);
- (iii) No mortgage can be established on such assets.

Disposal of public property. The Law on Public Property defines the following as the disposal of public property: (i) granting the right of use over public property, including use by a public authority; (ii) leasing of public property; (iii) transfer of public property to another public authority (with or without compensation); (iv) transfer of ownership; (v) establishment of mortgage or pledge; (vi) capital investment. As a rule, public property may be disposed of only for market value (disposals below market value or without consideration are possible if permitted by a special law) in a public auction (subject to certain exceptions). Disposal made contrary to the provisions of the Law on Public Property are considered null and void. Agreements on disposal or acquisition of immovables must be submitted to the attorney general for an opinion. The attorney general is obliged to file a suit for the annulment of agreements on the transfer of immovables to/from public property within one year from its conclusion (unless a different term has been prescribed by the law), if it has been concluded contrary to the law, or the stipulated price deviates from the prescribed one or the price which could have been reached at the time of agreement conclusion. The Law on Public Property does not consistently implement the classic institutes for challenging legal transactions (void and voidable transactions), in the sense that it clearly states that agreements concluded contrary to the law are null and void, but, on the other hand, (i) sets a time limit for filing the suit, and (ii) the suit is directed towards the annulment of the transaction, and not to declaring that it is null and void (both these aspects characterize voidable, and not void transactions). Such inconsistency may lead to legal uncertainty, given that it is not clear whether transactions which are contrary to the law may be challenged only during the one year period or after the expiration of the one year period as well.

Investment Rights. Public property owners may invest money, securities, ownership rights (other than those which may only be publicly owned) and other property rights into companies, even when such companies do not perform activities of general interest. The invested property becomes the ownership of the respective companies. Furthermore, public property owners may also invest public

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property (other than those which may only be publicly owned), as well as money, securities and other rights, as a capital contribution in a public company or a company engaged in an activity of general interest.

Special rules apply to the investment of construction land as a contribution in kind (e.g. prohibition of transfer or long term leasing of such land without consent of the founder of the respective company).

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Assets in public property may become co-owned by public or private parties, except when assets may only be owned publicly. The owner of public property (state, provincial or municipal) is entitled to, either on an individual basis or jointly with a third party, invest in the development of assets of general interest, assets in common use and other assets, and, on the basis of such investments, (in accordance with the law) to acquire the right of use or other rights (concession, etc.) and earn income.

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