

Serbia: Land Conversion Act

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The saga on privatization of construction land in Serbia is, apparently, near its completion. The Serbian Parliament passed the Act on Converting the Right of Use into Ownership on Construction Land against Fee ("**Conversion Act**") on 16 July 2015. The law will enter into force on 28 July 2015.

Preponderance of urban construction land in Serbia is still owned by the state, while companies holding the land have the right of use. This right of use is close to, but short of, ownership. It is transferrable and encumberable only together with the transfer or, as the case may be, encumbrance of the facility erected on the land. The Conversion Act aims at privatizing state-owned construction land held by: (i) companies acquired in privatization, bankruptcy or enforcement proceedings; (ii) holders of the right of use on undeveloped state-owned construction land acquired for construction purposes prior to 13 May 2003; (iii) associations and sport clubs; (iv) socially-owned companies; and (v) entities whose headquarters are in one for the former Yugoslav republic.

As a rule, the Conversion Act stipulates that the privatization of construction land is subject to payment of a conversion fee. The amount of the fee is equal to the market value of the construction land sought to be privatized. Market value is determined by the local tax authority. The applicant may challenge the evaluation during the first-instance procedure and appeal it to the Ministry of Finance.

The conversion fee may be reduced in the following cases, subject to the approval of the State Aid Commission:

- undeveloped construction land located in an underdeveloped municipality (the Government of Serbia is still to determine the percentage of reduction;;
- the applicant proves that it has incurred costs in acquiring the right of use (expropriation costs, remediation costs, administrative transfer costs etc.);

Conversion fee does not apply to privatization of the land needed for regular use of the facility constructed on the land, provided the facility is registered in the cadaster.

If conversion procedure is initiated with respect to the land subject to a pending restitution request, the restitution request has priority. This is expected to prolong the resolution of a number of conversion requests.

If the holder of the right of use has filed a conversion request under previous legislation, it will have to refile under the new one.

If the conversion fee is paid at once, a 30% discount applies. Otherwise, the fee is payable in 60 monthly instalments. In the latter case, the applicant may register ownership title upon payment of the first installment, subject to providing one of the following collaterals: (i) irrevocable bank guarantee; (ii) mortgage; or (iii) non-possessory (registered) pledge on movable property.

As an alternative to filling a request for conversion of the right of use into ownership, the holder of the right of use may opt for a 99-year lease. The annual rent is calculated by dividing the market value of the construction land with 99. The lessee must provide one of the above-mentioned collaterals. Long-term lease of construction land is a valid legal basis for obtaining the construction permit. Once the lessee develops the land, it is entitled to have the right of use converted into ownership against a conversion fee applicable to the land surface less the land required for regular use of the constructed facility.

The Conversion Act allows the holders of the right of use to apply for construction permit during the transitory period of 12 months following the entry into force of the Conversion Act.

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