

SRBIJA: Nepokretnosti

Ustavni sud suspendovao postupak konverzije

Dana 23.05.2013. godine, Ustavni sud Republike Srbije odlučio je da pokrene pitanje ocene ustavnosti člana 103. stav 1 Zakona o planiranju i izgradnji ("Službeni Glasnik Republike Srbije", br. 72/2009, 81/2009, 64/2010, 24/2011, 121/2012 i 42/2013) koji uređuje postupak konverzije prava korišćenja u pravo svojine na građevinskom zemljištu.

Prema osporenoj odredbi, ukoliko je pravo korišćenja na građevinskom zemljištu stečeno indirektno, sticanjem privrednog društva (ili dela imovine) u stečajnom postupku, postupku privatizacije ili izvršnom postupku, konverzija je moguća uz plaćanje naknade za konverziju, koja je određena kao razlika između tržišne vrednosti zemljišta u momentu konverzije i usklađene nabavne cene plaćene za kapital privrednog društva, odnosno deo imovine tog društva.

Do odluke o ustavnosti osporenog načina utvrđivanja naknade za konverziju, Ustavni sud je odlučio da obustavi sve tekuće postupke konverzije i onemogući pokretanje novih postupaka. Ovopraktično znači da do donošenja odluke o ustavnosti osporene odredbe od strane Ustavnog suda, neće biti moguće sprovesti konverziju prava korišćenja u pravo svojine na građevinskom zemljištu pribavljenom u postupku privatizacije, stečaja odnosno izvršenja. Ovo međutim, neće imati uticaja na izgradnju, jer je građevinsku dozvolu moguće pribaviti na osnovu punovažnog prava korišćenja na zemljištu.

SERBIA: Real estate

Constitutional Court Suspends Conversion Procedure

On 23 May 2013, the Constitutional Court of the Republic of Serbia decided to scrutinize the constitutionality of Article 103 para. 1 of the Law on Planning and Construction (Zakon o planiranju i izgradnji, Official Gazette RS no. 72/2009, 81/2009,

64/2010, 24/2011, 121/2012 and 42/2013), regulating conversion of the right of use on construction land into ownership. According to the disputed provision, if the right of use on construction land was acquired indirectly by acquiring a company (or a bulk of assets containing, inter alia, right of use on construction land) in bankruptcy, privatization or enforcement procedure, conversion is possible against payment of conversion fee to be determined as a difference between the market

Belgrade
Dobračina 38
11 000 Belgrade, Serbia
Tel: (+381 11) 3284 212
Fax: (+381 11) 3284 213
E-mail: office@bdklegal.com

Podgorica
Bulevar Džordža Vašingtona 51
81 000 Podgorica, Montenegro
Tel: (+382 20) 230 396
Fax: (+382 20) 230 396
E-mail: office.cg@bdklegal.com

Banja Luka
Gundulićeva 6, 78 000 Banja Luka
Republika Srpska, Bosnia & Herzegovina
Tel: (+387 51) 250 641
Fax: (+387 51) 250 642
E-mail: office.banjaluka@bdklegal.com

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value of the land at the time of conversion and the indexed purchase price paid for the entire company or a bulk of assets via which construction land was obtained.

Pending its decision on the constitutionality of the challenged conversion fee determination, the Constitutional Court decided to suspend all pending and preclude all future conversions. Practically, this means that until the Constitutional Court decides on the constitutionality of the relevant provision, no conversion of right of use into ownership will be possible in case of construction land acquired in privatization, bankruptcy and enforcement procedure. This should not, however, impact construction because construction permit can be obtained on the basis of holding a valid right of use on the land.

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