Serbia: Amendments to the Planning and Construction Act

JANUARY 2015

Serbia has chronic issues with the duration of the procedure for issuance of construction permit. According to the latest ranking by World Bank's *DoingBusiness*, in Serbia it takes on average 264 days to obtain a construction permit, which places the country on the 186th place among the total of 189 examined countries.[1] The latest amendments to the Planning and Construction Act, which came into force in December 2014, seek to address this problem. We set out below the key novelties of relevance to a standard construction process.

Location conditions

"Location conditions" is an initial document in the process of obtaining a construction permit. The purpose of this document is to supply the investor with information on the possibilities for and the limitations to the development on a particular location of relevance to the preparation of design documentation. The location conditions have been so far issued to the requesting investor personally and were not transferable. The acquirer therefore had to obtain new location conditions before it could have proceeded with a request for the construction permit. By virtue of the latest amendments to the Planning and Construction Act, the location conditions remain valid even if the title to the land is transferred in the midst of the permitting process and the new owner can rely on the conditions issued to the transferor.

Another novelty is that the location conditions can now be issued even before all planning documents are adopted by the relevant authorities. Previously, the procedure for the issuance of construction permit could not have started to unfold until all planning documents were in place.

Similarly, division and/or merger of cadastral parcels may now be performed even before all planning documents are in place. Prior to the amendments, this had been possible only after all planning documents were in place. This represented an undue burden on the parties whose regulation of ownership issues could not have been implemented before a bureaucratic planning procedure, which was completely outside their influence, were completed.

Integrated permitting procedure

A major procedural improvement is in the introduction of the integrated permitting procedure. A one-stop shop called the Registrar will be in charge of the entire procedure, from the issuance of the location conditions to the issuance of construction and operational permits. Instead of having to collect requisite documentation from a dozen of different authorities and public utilities providers, the investor will be from now on required to produce to the competent authority only those documents which the competent authority cannot obtain *ex officio*. If the requested authority or public company in charge of the issuance of a particular document does not provide the document to the competent authority within 15 days from the request, the competent authority is obliged to initiate misdemeanor proceedings against such authority or company. This is expected to significantly relax and speed-up the permitting process. However, the new solution is not without its potential downsides. Because the competent authority will be collecting the relevant documents *ex officio*, the investor will not be in a position to "negotiate" with the issuing authority or utility provider the content of the relevant document. For example, in order for the competent authority to issue to the investor the location conditions, it has to obtain the conditions for connection to infrastructure (e.g. diameters of water pipes, access points for infrastructure lines etc.) or the conditions for cultural protection if the property represents cultural asset, etc. Because the issuing authorities and public companies have a degree of discretion when formulating the conditions applicable to a real estate development, the investors have in practice been able to negotiate those conditions to a certain extent.

The provisions on the new integrated procedure for the issuance of relevant permits will become applicable on 1 March 2015. Unfortunately, the law does not regulate which procedure applies until March 2015 and it remains unclear whether the authorities will be issuing any construction permits in this interim period.

Starting from 2016, the exchange of documentation between the investors and the competent authority in charge of using requisite permits will be performed electronically.

Conversion

A large land portfolio in urban construction areas is still owned by the state, whereas the holders of the land have permanent right of use on such land. Companies which were acquired by their current owners in privatization, bankruptcy or enforcement procedure were obliged to convert the right of use into ownership against a conversion fee. Those which did not perform conversion have been prevented from developing the land which is state-owned and from reconstructing the existing facilities on such land. The amendments do away with the moratorium on (re)construction. As a result, the companies holding land subject to the right of use will be able to perform (re)construction works

on such land until a special law on conversion is enacted. The enactment of such special law is expected within 6 months.

Land development fee

Land development fee is a quasi-tax payable by the investor to the municipality in which the land development is located for the infrastructural development of construction land. The amount of the development fee differs from one municipality to another. For example, in Belgrade it ranges from approx. EUR 6 to approx. EUR 840 per m2 of net surface of the facility under development. Prior to the amendment, the fee had to be settled before the issuance of the construction permit. The amendments now provide that the land development fee can be paid after obtaining the construction permit but before commencing works.

If the investor proposes to finance the development of infrastructure on the land (e.g. utility infrastructure or arrangement of public surfaces), the land development fee can be reduced for the value of such investment> The previous version of the law recognized to investor only 60% of the total investment cost.

The local municipality can no longer set the amount of the land development fee at its discretion. The amendments prescribe the methodology for setting the fee and the caps. The new methodology is supposed to be implemented into the municipal legislation until 16 January 2015.

The land development fee is not payable for construction of facilities intended for public use (e.g. hospitals), infrastructure, production facilities, warehouses, underground floors other than those with business purpose (garages, substations, storages and similar), open playgrounds, open sport facilities and athletic lanes.

Financier

The amendments introduce a notion of financier - a third party which (co-)finances the construction on the basis of an agreement with the investor, but does not acquire the title to the facility. If the financier is included in the construction permit, it shall be jointly and severally liable for the obligations owed to third parties resulting from the actions it undertook based on the authorities granted to it under the agreement with the investor. Since the law explicitly denies to the financier the right to acquire the title to the building, the practical benefit of having this legal concept is unclear.

Sale of public construction land

Since 2009, long-term lease of public construction land has been the dominant mode of disposing

with public construction land. The amendments now provide that pubic land can be leased only for the purpose of constructing: (i) temporary facilities (up to 5 years), (ii) facilities of national interest, and (iii) facilities under concession or other form of PPP arrangement. In all other cases, public land should be, as a rule, sold rather than leased.

Mandatory insurance

Companies engaged in designing, design control or technical inspection, contractors and supervisory bodies are subject to mandatory third-party liability insurance. The specific insurance requirements are supposed to be specified by the ministry in charge of construction.

[1] Data Retrieved from http://www.doingbusiness.org/data/exploreeconomies/serbia/#dealing-with-construction-permits.

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