

# REAL ESTATE AND CONSTRUCTION

1.48

The impression from the real estate market is that investments in this sector continue this year, despite numerous unknowns and uncertainties due to the COVID-19 virus pandemic.

The issue of land ownership and mixed forms of state and private ownership still remains a significant obstacle to construction in Serbia. It is necessary to consider the possibility of amending the law regulating the issue of conversion with a fee, in the part concerning the payment of

the conversion fee, so that the fee is either significantly reduced or completely abandoned as a concept, and in any case it is necessary to significantly simplify the conversion procedure. It remains unclear to what extent companies use the possibility of the lease of construction land as an alternative to conversion.

The electronic administration of the real estate cadastre and the line cadastre is facing numerous challenges that need to be overcome in a timely manner.

## WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
<b>Construction land and development</b>				
The implementation of the Planning and Construction Law should be monitored by all relevant stakeholders.	2015		√	
Digitalisation of public administration and all administrative procedures	2020		√	
It is necessary to amend the Legalization Law in order to limit the prohibition of disposal to buildings that cannot be legalized, as well as to delete the provision that provides for rejecting a request for legalization if the legalization is not completed by 2023.	2019			√
It is necessary that the Decision on legalization has the power of a construction permit and a use permit, which will be prescribed by the appropriate content of the decision (without an additional technical examination /obtaining of a special permit to use).	2019			√
Article 11(6) of the Law on Conversion for a Fee should be confined to cases where the conversion applicant is a company with majority public or state-owned capital.	2016			√
Creation of coherent legal practice and improvement of effectiveness in decision making in conversion procedures by the by the competent authorities, having in mind the latest amendments of the Law on Conversion for a Fee.	2020		√	
Enactment of rulebooks on issuance of licences and clarify the obligation of subcontractors engaged by a contractor to hold licenses which are already held by the contractor and vice versa should be clarified.	2019			√
<b>Mortgages and Real Estate Financial Leasing</b>				
The Law on Financial Leasing must be harmonized with current real estate regulations, in particular in terms of the possibility of registering an existing real estate lease in the real estate cadastre, which must be clearly prescribed by the Law on the Registration Procedure with the Cadastre of Real Estate and Utilities. Also, by elaborating the tax legislation, the state should create a more favourable climate for implementing financial leasing in the real estate sector.	2009			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Law on Mortgage needs to be amended to explicitly regulate the procedure and consequences of amendments to registered mortgages, to regulate some of the more flexible types of mortgage envisaged by comparative law, such as conditional, credit and continuous mortgages, and allow a mortgage to be registered as collateral for multiple claims on different legal grounds, and for different creditors' claims.	2018			√
The rights of the tenant in the case of extrajudicial enforcement should be specified.	2018			√
<b>Cadastral Procedures</b>				
It is necessary to ensure uniform, transparent and clear implementation of laws for further acceleration and foreseeability of cadastral procedures, and to harmonize the laws according to which permits are issued with the laws related to the registration of real estate and rights to them, ie to establish legal continuity by recognizing permits obtained in accordance with the provisions of previously valid laws regulating this area.	2012		√	
Connectedness and promptness of information systems and exchange of data between cadastres and other state authorities.	2012	√		
It is necessary to establish an efficient system for the resolution of clients' requests and simplify the manner of submitting updates to the so-called notary cases or introduce the obligation for the notaries to add the documents necessary for the completion of registration to the documents they are certifying.	2019			√
Republic Geodetic Authority should conclude all unresolved first-instance and second-instance cases as soon as possible.	2018		√	
It is necessary to allow deployment of a party in the case which was opened by a notary, as it is the service performed by notaries.	2020			√
It is necessary to determine the number of unresolved cases which include registration and release of mortgages and resolve them as a priority in order to introduce legal certainty into business processes.	2019		√	
Establishment of an electronic base for Utility cadastre which will be accessible to the public or registered users, as it has already been done with the real estate cadastre, with the possibility of issuing excerpts from the cable duct cadastre (as it has been done with real estate folios that are issued from the real estate cadastre).	2019			√
It is necessary to register all lines in the utility cadastre without delay, but also the rights to them, which is of general importance (it is important to know who owns the line due to the needs of, for example, quick reaction in certain situations in order to protect life and health of people, property and the environment).	2019		√	
Online access to real estate cadastre data should be free and unlimited, with real-time update	2012		√	
Real estate sheets in electronic form from GKIS are illegible, primarily for plots with several objects, where it is not possible to get an overview of A list in which all objects / parts of one plot will be listed on one list / page. It is necessary to return the form in which LNs were issued by July 6, 2020.	2020			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
<b>Restitution</b>				
The Restitution Agency should conduct transparent restitution procedures granting the right to restitution to redress the injustice perpetrated 70 years ago, taking due care to protect basic human rights of the parties to the proceedings.	2015			√
Foreign nationals should be allowed to exercise the right to restitution, equating them with Serbian nationals in these proceedings, irrespective of their citizenship and nationality, in accordance with decisions of judicial authorities and the Ministry of Finance.	2015			√
State authorities should ensure that the acquired rights of foreign investors are protected in accordance with the law.	2015		√	

## CONSTRUCTION LAND AND DEVELOPMENT

1.43

### CURRENT SITUATION

The focus of the Foreign Investors Council (FIC) remains on the implementation of the Planning and Construction Law, and in particular the permitting procedure, construction land status and legalization of buildings. New investments, obtaining the necessary permits in the integrated procedure and the follow-up of the adopted legislation remain the FIC’s main areas of interest.

The issue of property rights and mixed forms of private and public property remains a substantial obstacle in the construction sector in Serbia. Until 2009, the state was the sole owner of urban construction land, and the only right that someone could have to this land was a permanent right of use, or a long-term lease of 99 years.

#### Conversion of the right of use to ownership of construction land

The Planning and Construction Law provides for two types of conversion: no-fee conversion, set as a general rule, and conversion for a fee (governed by a separate law).

Conversion for a fee applies to holders of the right of use that are:

- entities which were privatized under the laws governing privatization, bankruptcy and enforcement proceedings, as well as their universal successors;

- entities which acquired the right of use on the land after 11 September 2009, through purchase of the building, with the accompanying right of use on the land, from the entities, which were subject of privatization in the past (as indicated immediately above);
- companies that acquired the right of use over state-owned undeveloped land which was acquired for development before 13 May 2013 or based on a decision of the competent authority;
- sport and other associations;
- socially-owned companies;
- entities incorporated in ex-Yugoslavia to which the Succession Treaty is applicable.

The Law on the Conversion of the Right of Use to Ownership of Construction Land for a Fee (“Law on Conversion for a Fee”) prescribes conditions for the conversion of the right of use to ownership over publicly-owned construction land and the possibility of establishing a long-term lease on such land.

The conversion fee is set at the market value of land (by the local municipality) at the time of submitting the request for conversion. Reductions of the fee are possible, under the terms stipulated by law (the most notable reduction is in the case of developed land, where the fee is not payable for land under a building and for a regular use of a building). State aid clearance applies to reductions (to the extent applicable).

The Law on Conversion for a Fee allows for concluding a 99-year lease agreement with the owner of construction land until conversion. In this way, the lessee can obtain a construction permit before paying the conversion fee.

## Construction

The Planning and Construction Law was amended several times in the past few years. The amendments may be generally considered as positive because their goal was to facilitate the procedures and to make clarifications, as well as to improve the regulatory framework.

Some of the most significant amendments are as follows:

- a construction permit ceases to be valid if the commencement of works is not notified within three years from the day when the decision on the construction permit becomes final, instead of the previously prescribed two-year period;
- concept of condominium is introduced;
- instead of the Serbian Chamber of Engineers, the Ministry competent for construction and spatial and urban planning issues licenses to the responsible planner, responsible urbanist, responsible designer and responsible contractor. The Ministry shall check whether foreign citizens meet the requirements to provide these services;
- establishment of Register of investment locations is prescribed;
- the Central Registry of Energy Passports (CREP) has been established. It contains a database of authorized organizations which qualify for the certificate issuance, of responsible engineers for energy efficiency who are employed at such organisations, and of issued certificates on energy characteristics of building;
- Instead of being held jointly responsible with the investor for all liabilities against third parties, the financier is responsible for liabilities towards third parties which are consequences of activities performed by it in accordance with its authorisations;

prescribing of a strict deadline for competent state bodies to adopt new planning documents, which would replace the planning documents adopted before January 1st, 1993 and envisaging monetary fine for the responsible person of the local self-government unit if the new planning documents are not adopted by May 24th, 2023.

## Legalization

The legislators tried to cope with legalization issue by enacting various regulations, but none of these attempts were deemed successful. The Legalization Law from 2015 stipulates only two options for illegally built facilities – demolition or full legalization. This law was significantly amended in 2018, with the prohibition of disposal on illegal

buildings and the 2023 deadline for the completion of the legalization process being the significant amendments.

## POSITIVE DEVELOPMENTS

### Conversion of the right of use to ownership of construction land

Provisions of Article 11, paragraph 6 of the Law on Conversion for a Fee, stipulated that the conversion process shall be immediately suspended by the competent authority if it is established that the plot of land is subject to restitution, until the final and legally binding completion of the restitution process.

Amendments of the Law on Conversion for a Fee from 2020 have changed the respective provisions in less strict manner and hence the conversion procedure shall be immediately suspend in the respective case, until the until the final and legally binding completion of the restitution process, or until the final decision on in-kind restitution is enacted, or until the confirmation that the natural restitution is not applicable is issued.

Amendments of the Law on Conversion for a Fee from 2020 in more detailed manner stipulate the cases to which the conversion with the fee applies, as well as the exceptions to the conversion with the fee regarding the real estate which belonged to entities which were privatized in the past.

Additionally, certain improvement was made regarding conversion procedures - the authorities are becoming more cooperative in this regard.

## Construction

As for the number of issued construction permits, one may note an increase in the number of issued construction permits since the unified procedure was introduced.

## REMAINING ISSUES

### Conversion of the right of use to ownership of construction land

Article 9 of the Law on Property Restitution and Compensation provides that only a public enterprise or other legal entity (i.e. an entity founded by the Republic of Serbia, autonomous province or a local government unit, a company with a majority state-owned capital and cooperatives, including enterprises and cooperatives in the process of bankruptcy or liquidation) is obliged to return nationalized

property, and that restitution in kind is not possible in all other cases. Consequently, a stay of the conversion process in all these other cases is unjustified.

There are serious problems with inconsistencies in the calculation of the conversion fee by the relevant authorities.

Consequently, investors cannot predict in advance the amount of the conversion fee for large-scale projects and plan the funds in their accounting records accordingly. The unpredictability of the costs of conversion proceedings significantly affects plans of investors to acquire locations that require conversion proceedings.

## FIC RECOMMENDATIONS

### Conversion of the Right of Use to Ownership of Construction Land

- The Law on Conversion for a Fee should be amended in order to reduce the costs of the conversion fee.
  - With regards to the undeveloped construction land, the holder of the right of use on the undeveloped construction land should be entitled to request registration of the ownership over such land, whereas the registration of the ownership in the Real Estate Cadastre should be accompanied with registration of annotation that the conversion fee has not been paid. This type of registration, would be a sufficient legal basis for the owner to acquire the construction permit, prior to payment of the conversion fee. Further, if such holder of right of use (i.e. newly registered owner) manage to obtain a construction permit and construct real estate on such land and register it in the Real Estate Cadastre within a period of 10 years, he should acquire the right of ownership on such land free of charge. Alternatively, if the real estate has not been constructed within the period of 10 years, such holder of right of use (i.e. newly registered owner) should be obliged to pay a reasonable fee in the fixed amount per square meter of the surface area of the subject land.
  - When it comes the developed construction land, possibility of abolishment of payment of conversion fees should be considered, if in the moment of the entry into force of the new law, there is a legal building constructed on such land. Alternatively, prescribing a reasonable fixed amount of fee per square meter of the land without determining the land for regular use of the facilities, would be also a good incentive for further development of this sector. The amount may be determined according to the size of the city or municipality. For example, in Belgrade, the conversion fee can be 10 euros per m<sup>2</sup>, and in smaller cities and municipalities 3 euros per m<sup>2</sup>.
- It remains unclear to what extent companies use the possibility of construction land leasing as an alternative to conversion. It is also unclear whether it is possible for a company that has the property right on the building with a corresponding right to use the land, to lease such (built) land instead of converting (for example, to demolish an existing building and build a new one), given that the institute of building land lease has so far generally been reserved only for undeveloped construction land.
- The state needs to take the necessary actions to promote this alternative (lease instead of conversion) and use the lease more often in practice.

### Construction

- It is necessary to improve software solutions and capacities to facilitate and speed up the procedure of electronic submission of documentation.
- The competent authority in the integrated procedure should issue permits with the appropriate content which will, in accordance with the relevant legislation, enable the investors to register ownership rights at the newly constructed building(s) (especially when it is related to a complex with several buildings and lines/pipelines), and without being exposed to an additional consumption of resources and time in order to obtain some special documentation

(evaluation reports and etc.) by which it will be confirmed what building/s the construction and usage permits are related to (comparing the permits and projects based on which the permits have been issued). It is necessary that permits be forwarded without delay and in accordance with the official duty to the competent cadastre authority of immovable properties i.e. the office for the utility network cadastre (if it is related to the constructed pipelines).

### Subcontractor's license

The lack of precision regarding the obligation to obtain a license for contractors and subcontractors leads to uneven and unclear practice. The question arises as to whether subcontractors are obliged to obtain the license in cases when the main contractor (an entity with whom the investor entered into a direct construction agreement for the whole works) holds the license and is the main contractor obliged to have license if all subcontractors hold appropriate licenses. The answer to this question does not only affect the existence of the obligation to initiate the process of obtaining the license, but also other aspects of the subcontractor's and contractor's business, especially if it is a foreign entity. In addition, it is necessary to enact the rulebooks regulating issuance of the licences.

- Enactment of rulebooks on issuance of licences and clarify the obligation of subcontractors engaged by a contractor to hold licenses which are already held by the contractor and vice versa should be clarified.

### Legalization

Prohibition on disposal has created a problem when the title holder of an illegal building and the title holder of the land are not the same person. The Law should be amended in order to enable the legalization of such buildings when there is consent of both sides. Also, it is necessary to reconsider whether the prohibition on the disposal of illegal buildings should be limited to buildings that cannot be legalized because in practice, the existing prohibition significantly complicates legal transactions in situations where legalization is possible and hence such prohibition is not justified. Also, prescribing the deadline for legalization which results in the rejection of a request for legalization is a principle that should be changed, because the procedure is conducted ex officio and does not depend on the will of the party, and therefore the owner of an illegal building should not bear consequences of the administration's inefficiency.

The Law is ambiguous on the issue of whether a decision on legalization substitutes a construction permit and a use permit. The practice has shown that a decision on legalization does not constitute, pursuant to the opinion of the competent institutions, a valid legal base for issuing an energy licence, which is why the energy licencing procedure requires performing a special technical acceptance procedure for buildings which have been subject to legalization, i.e. obtaining a special technical examination commission report in which it will be clearly stated that the building is fit for use in accordance with its purpose even though for such a building the purpose is stated in the decision. Furthermore, the owners of the buildings are exposed to additional expenses and are put into an unequal position compare to the owners of other buildings with different purposes for which it is not required to obtain an energy licence.

- It is necessary to amend the Legalization Law in order to limit the prohibition of disposal to buildings that cannot be legalized, as well as to delete the provision that provides for rejecting a request for legalization if the legalization is not completed by 2023.
- It is necessary that the Decision on legalization has the power of a construction permit and a use permit, which will be prescribed by the appropriate content of the decision (without an additional technical examination / obtaining of a special permit to use).

## MORTGAGES AND REAL ESTATE FINANCIAL LEASING

1.00

### CURRENT SITUATION

The Law on Mortgage, adopted at the end of 2005, was last amended in 2015.

We have to point out again that these latest amendments to the Law on Mortgage were not sufficiently far-reaching, the impression being that they lack additional clarifications, which could have been very useful. In addition, they also failed to introduce some new useful concepts.

Notwithstanding the fact that the Law on Mortgage has not been subject to amendments recently, the procedure on mortgage registration in the cadastre has been significantly amended by the adoption of the Law on the Registration Procedure with the Cadastre of Real Estate and Utilities in 2018, which reflected not only on the procedure for mortgage registration, but on the implementation of certain provisions of the Law on Mortgage as well.

The financial leasing of real estate, introduced by amendments to the Law on Financial Leasing in May 2011, is not yet operational in practice.

### POSITIVE DEVELOPMENTS

Given that there were no legislative changes in longer period of time, there have been no manifest developments in this area. One point that can be mentioned here is digitalization process within the real estate cadastre which has positive effect on the speed of the mortgage registration procedure.

### REMAINING ISSUES

A situation that is not uncommon in practice, i.e., the registration of one mortgage as collateral securing multiple claims on different grounds and also by multiple creditors has not yet been explicitly regulated. Issues related to setting up a mortgage to secure claims of multiple creditors have appeared as

a consequence of the opinion of public notaries that such a mortgage may be set up only in cases when the claims of different creditors have the same legal basis.

The introduction of the institute of a “third party” (in effect “the security agent”) is a positive step, but the existing provision does not elaborate on the role of the security agent in relation to the relevant authorities. We believe that, in practice, the security agent will probably need to obtain special authorizations for undertaking actions on behalf of mortgage creditors before the competent authorities.

The form of the mortgage document has not been regulated in a satisfactory manner yet. Given that the only requirement for a real estate sale contract is that it should be solemnized by a notary public, there is no policy reason why the same practice should not be applied to the mortgage documents as well.

The requirements of the Law on Mortgage in relation to the mandatory elements of the mortgage document pertaining to the secured claim are too excessive and inadequate for claims other than the loans. Further, such requirements are completely inadequate for future claims.

The position of the tenant in the case of an out-of-court settlement of a mortgage is not entirely clear. Unlike the Law on Enforcement and Security which explicitly states that the tenant can be evicted unless his lease is registered in the cadastre before all the mortgages and enforcement orders, the Law on Mortgage is silent on this matter. Thus, this implies that the general regime from the Law on Obligations applies, meaning that the lease agreement survives out-of-court foreclosure if the tenant was already in possession of the mortgaged property.

Finally, the Law on Mortgage has not explicitly stipulated more flexible forms of mortgage that exist in comparative law, such as deposits, credits or continuing mortgages, as well as the (im)possibility and effects of annexing existing mortgage documents.

As for real estate financial leasing, we point out that it still does not work in practice, as the legal framework has not been sufficiently developed.

## FIC RECOMMENDATIONS

- The Law on Financial Leasing must be harmonized with current real estate regulations, in particular in terms of the possibility of registering an existing real estate lease in the real estate cadastre, which must be clearly prescribed by the Law on the Registration Procedure with the Cadastre of Real Estate and Utilities. Also, by elaborating the tax legislation, the state should create a more favourable climate for implementing financial leasing in the real estate sector.
- The Law on Mortgage needs to be amended to explicitly regulate the procedure and consequences of amendments to registered mortgages, to regulate some of the more flexible types of mortgage envisaged by comparative law, such as conditional, credit and continuous mortgages, and allow a mortgage to be registered as collateral for multiple claims on different legal grounds, and for different creditors' claims.
- The rights of the tenant in the case of extrajudicial enforcement should be specified.
- The Law on Mortgage needs to be amended to simplify the requirements in relation to the mandatory elements of the mortgage document pertaining to the secured claim, i.e. not to require more than the amount, currency and interest (if any). Further, adequate language to be stipulated for future claims by e.g. specifically allowing registration of maximum future secured amount.

## CADASTRAL PROCEDURES 1.70

### CURRENT SITUATION

Over the past year, the Republic Geodetic Authority has continued to work intensely on the digitalization of procedures that it started implementing last year. Electronic notice board represents an attempt to overcome the problem of decision delivery and, as such, it provides more transparency with regard to the acts adopted by the cadastre. An address registry was established, as well as a procedure for determination of house numbers on the territory of the entire country. Introduction of e-desks enhanced digital communication between geodetic organizations which realize operations envisaged by the Law on State Survey and Cadastre.

The progress in this area is noticeable, but there is still room for improvement.

The exact number of unresolved cases in the first and second instance is yet to be determined, but the assumption is that there are hundreds of thousands of them. The lack of capacity and untimeliness of the staff bring about piling of unresolved cases, and the priority is given to the requests submitted by

notaries. The effects of COVID-19 pandemic have additionally contributed to otherwise notable tardiness, regardless of the efforts on digitalization of work of RGA services. Regardless of the potential effects of the pandemic or other unforeseen difficulties, it is essential to improve the organization of services in order to reduce the number of unresolved cases and speed-up the process of decision making as soon as possible.

There is still the problem of slow work of the utility cadastre departments, as well as the non-resolved issue of documentation required for registration of the rights to the utility lines (non-recognition of permits issued before introduction the possibility to register rights on lines, but also for lines for which the permit was issued under the unified procedure due to non-listing individually all lines to which the permit refers). Addition problem with the utility cadastre is lack of adequate software which will connect a public notary with the cadastre (for example, it is not possible to file a request for the mortgage registration on the utility lines through the notary's office).

### POSITIVE DEVELOPMENTS

In relation to the recommendations of the Council from the 2019 and 2020 White Book, significant improvements were



made in the digitalization of processes. A certain amount of progress has been made in relation to the following recommendations:

- It is necessary to ensure clearer and more transparent instructions on the implementation of laws and regulations with the aim of accelerating and improving the foreseeability of cadastral procedures – RGA website offers instructions, request forms, the possibility to monitor the status of the case and make an appointment with the person who processes the request
- Republic Geodetic Authority should contribute to the harmonization of practices of real estate cadastre offices/utility cadastre departments and strengthen control over their work, to ensure accessibility for the parties that request consultations, act more promptly upon complaints, and allow complaints about the work of utility cadastre departments to be filed via link on the RGA official website - the harmonization of practices was successful in certain cases,
- Software maintenance and improvement has to be more efficient – besides noticeable problems that are rapidly resolved, improvements have been made in the maintenance of the publicly accessible cadastre database.

The implementation of the above listed recommendations can be generally regarded as positive, as their adoption contributes to timeliness, reduces clients' waiting time, simplifies and accelerates registration procedures, even though there is still plenty of room for improvement.

## REMAINING ISSUES

The main problem lies in inconsistent interpretations of applicable regulations by different real estate cadastre services, which are often non-compliant with other laws and bylaws.

The deadlines for delivery of decisions upon clients' requests for registration in the cadastral registry represent one of the most significant problems, as the deadlines are routinely exceeded, due to the fact that cadastre offices are overloaded with unprocessed cases. Even though a certain amount of progress has been made, a number of cases from the past remains unresolved, some of which date years back. The aforementioned also applies to the second-instance cases.

Offices still exhibit excessively formalistic approach to the resolution of requests for the registration of real estate rights. It is evident from their acting in the cases which are submitted by notaries, where the party is not allowed to participate in a possible case update or abandonment of the submitted request.

There is also a problem with the registration of facilities built under the Law on Mining and Geological Research and the rights to them, particularly in relation to the lines built several decades ago under permits obtained in accordance with the then applicable regulations.

A major challenge for the cadastre is the beginning of complete digitalization as of 01/01/2021 – even though it is known for a while that this is the date from which requests cannot be submitted to the cadastre in hard copy, competent bodies and services have neither found effective, accessible nor economical mechanism for submission of requests, especially by natural persons, nor was the general public loudly and clearly informed and instructed on available alternatives.

Speaking of the cadastre of utility lines, it should be noted that it happens in practice that notaries do not have any access to this cadastre, hence cannot obtain a sheet of utility lines, nor they can electronically file a request for the mortgage registration on utility lines. On the other hand, hard-copy submission is not allowed.

## FIC RECOMMENDATIONS

- It is necessary to ensure uniform, transparent and clear implementation of laws for further acceleration and foreseeability of cadastral procedures, including how to overcome the problems with registration of utility lines built according to old legislation.
- It is necessary to establish an efficient system for the resolution of clients' requests and simplify the manner of submitting updates to the so-called notary cases or introduce the obligation for the notaries to add the documents necessary for the completion of registration to the documents they are certifying.

- Republic Geodetic Authority should conclude all unresolved first-instance and second-instance cases as soon as possible.
- It is necessary to allow full control of a registration procedure by the parties in the case which was opened by a notary, as it is just a service performed by notaries.
- Establishment of an electronic base for utility cadastre which will be accessible to the public or registered users, as it has already been done with the real estate cadastre, with the possibility of issuing excerpts from the utility cadastre (as it has been done with real estate folios that are issued from the real estate cadastre).
- It is necessary to register all lines (and rights to them) in the utility cadastre without delay,
- Real estate cadastre must be more accessible to general public and companies, such as, email communication with the real estate cadastre must be more efficient, the cadastre should work harder to make people more familiar with the electronic procedures, anyone should be entitled to easily schedule a face-to-face meeting in the relevant cadastre, etc.
- Software of the utility lines cadastre and a notary's digital platform must be harmonized in order to allow the notaries to file requests for mortgage registration or mortgage release towards the utility lines cadastre, as well as to enable them to obtain sheets on utility lines.
- Online access to real estate cadastre data should be free and unlimited, with real-time update.
- Property sheets in electronic form from Cadastral online database are not user-friendly, especially for plots with several objects, where it is not possible to get an overview of A sheet in which all objects / parts of one plot are listed on the same place. It would be beneficial to improve the format so as to be similar to the the form in which the hard copy property sheets were issued before 2020. This new format (because of which each part of the plot and each building/part of the building must have a separate sheet) has caused excessive fees for some companies who possess over several hundreds of land plots, for example, a huge agricultural site. The fee for sheets in such cases amounts several thousands of euros, given that each sheet is charged separately. Although the e-cadaster evidence has been established, banks and other institutions require the official and original excerpts to be obtained. Hence, this issue must be solved as soon as possible, as it causes significant burdens to the investors.
- Geodetic organizations should be entitled to issue official copies of cadastral plans and cadastral plans of utility lines.

## RESTITUTION

1.33

### CURRENT SITUATION

The urgency of restitution is grounded in its tremendous potential for promoting the security of property rights in a symbolic and exemplary manner, clearly showing the state's intention to return what was unjustly expropriated. The deadline for filing claims has expired, and institutions have started processing individual requests, but still the impression is that this will take some time.

The Law on Property Restitution and Compensation (Law) protects the acquired rights of individuals, while the statutory obligation of restitution arises only in cases when a property, which may be subject of restitution, is not in private ownership. Although the Law prescribes in-kind restitution (i.e. restitution of an unjustly expropriated property) as the primary model, there are numerous exceptions and it is likely that compensation will be the most prevalent form of redress. In-kind restitution is the obligation of the Republic of Serbia (RoS), local governments, public enterprises established by the RoS and socially-owned companies and co-operatives, while the disbursement of compensation is the exclusive obligation of the RoS. Rarely, privatized companies may be obliged to make restitution in kind.

The Restitution Agency (Agency), as well as other stakeholders including the Constitutional Court, have taken a rigid position, particularly with respect to foreign nationals. This is reflected in an inadequate application of the principle of discretionary evaluation of evidence, as well as in requests for documentation which is not necessary for decision-making and which is in most cases impossible to obtain.

The problem is a result of the deficiencies in the law itself which prevent the stakeholder to apply the principle of free assessment of the evidence, and there are also discrepancies between regulations in the field restitution.

### POSITIVE DEVELOPMENTS

In 2017, the Constitutional Court, the Supreme Court of Cassation, the Administrative Court of Serbia and the Ministry of Finance made decisions which annulled the Agency's decisions made in contravention of the law, which,

provided that the Agency complies with these authorities' orders, should significantly contribute to progress.

According to the Constitutional Court's and the Supreme Court's decisions, the Agency is obliged, in each case, to request the missing documents from applicants before dismissing a request as incomplete, thus enabling the applicants to participate in the proceedings.

Under the Administrative Court's decisions, the Agency was ordered to act in accordance with all laws and international agreements, forbidding the Agency to make decisions on issues outside its jurisdiction, especially regarding the existence of reciprocity with foreign countries.

The Ministry of Finance ordered the Agency to comply with court decisions in further processing, in particular court decisions rehabilitating former owners. The Ministry's decision made it clear that in cases where former owners have been rehabilitated by court decisions, the Agency has no authority to deny requests for restitution on the grounds that the former owners were members of foreign occupying forces.

With amendments of by-laws, the restitution of agricultural land by substitution was made possible. This means that, in some cases, it is possible to acquire the right to restitution of agricultural land of the same type and quality as the seized agricultural land, but on the territory of a different self-government unit. In practice such restitution process mostly does not take into consideration existence of different types of buildings/objects (such as lines and boreholes) in the ownership of third parties which agriculture land under such objects have to be exempted from restitution. The list of agriculture land that is included in the restitution procedure without being performed a land consolidation procedure is not officially disclosed.

In the beginning of 2021 the Government of the Republic of Serbia rendered a conclusion determining that the compensation in the cases where it is impossible to allow restitution in kind, will be 15% of the value of the seized property.

### REMAINING ISSUES

Ambiguities and inconsistencies in the Law have led to divergent practices by the Agency, which may jeopardize the acquired rights of foreign investors.

In some of the restitution cases, the Agency interprets regulations in a manner that hinders or even denies foreign nationals their right to restitution or compensation. Judicial and administrative authorities of the RoS have made decisions in certain cases to correct irregularities in the Agency's work, but the question remains whether the Agency will adopt and apply instructions from these decisions.

The question of the freedom of the assessment of proofs in restitution procedures has not been resolved. Claimants in restitution procedures who are not able to obtain

the legally prescribed specific proof – the document on seizing – will not be granted the restitution right regardless of the existence of other proofs that the seizing of the property did occur. Unfortunately, the Constitutional Court of the RoS has taken the position that lawmakers are allowed to exactly specify the proofs that must be submitted in the procedures for proving a certain fact, as well as that lawmakers are entitled to determine that all the other means of proving are “insufficient and unreliable,” so the initiative for determining the constitutionality and legality of the respective provision of the law has been rejected.

### FIC RECOMMENDATIONS

- The Restitution Agency should conduct transparent restitution procedures granting the right to restitution to redress the injustice perpetrated 70 years ago, taking due care to protect basic human rights of the parties to the proceedings.
- Foreign nationals should be allowed to exercise the right to restitution, equating them with Serbian nationals in these proceedings, irrespective of their citizenship and nationality, in accordance with decisions of judicial authorities and the Ministry of Finance.
- Agriculture land under all type of objects/buildings such as lines and boreholes, have to be exempted from restitution and a the agriculture land in the restitution for which the consolidation procedure was not being performed have to be listed and disclosed by the Agency.