

Draft amendments to Law on Spatial Planning and Construction adopted by Government of Republic of Serbia

Introduction

During 2014 the Ministry of Construction, Traffic and Infrastructure of the Republic of Serbia has put significant effort into drafting amendments of the existing Law on Spatial Planning and Construction, with a single goal – to improve the ranking of the Republic of Serbia in the annual World Bank Doing Business Report.

After several drafts were circulated and discussed in public, the draft of the amendments to the Law on Spatial Planning and Construction was adopted by the Government of Republic of Serbia and the amendments are expected to be enacted by the Serbian Parliament by the end of 2014.

Why is it necessary to change this law?

For the past fifteen years Serbia has been trying to attract foreign investments by creating a foreseeable business environment, to resolve the remaining relicts of socialist laws and to eradicate corruption. All these issues are becoming significant problems when it comes to construction. All efforts so far have been unsuccessful, since foreign investments in construction are decreasing, construction land is mainly owned, directly or indirectly, by the Republic of Serbia, and the procedure of issuing construction permit lasts for 264 days, creating an administrative Eldorado for corruption.

The existing Law on Spatial Planning and Construction tried to resolve the issue of ownership over construction land through conversion of the right of use of state-owned construction land to right of ownership. In 2013 the provisions relating to such conversion were declared unconstitutional, and it became clear that proprietary status over construction land is the primary problem and condition for further improvement of the process of issuing of construction permits.

Apart from the conversion problem, the existing Law on Spatial Planning and Construction failed to speed up the process of issuing construction permits even in cases when conversion was not necessary, which means that, so far, both the legislation and administration have failed to improve the business environment in Serbia.

What is new?

The draft of the amendments of the Law on Spatial Planning and Construction introduces significant changes in the procedure of issuing construction permits, and temporarily resolves conversion problem. For the first time the Government has shown the intention to adopt bylaws supporting the amendments to the law along with adopting of the amendments.

The outcome of the amendments should be a faster procedure of issuing construction permits, and the possibility for investors who did not carry out the conversion to obtain a construction permit.

For the first time the procedure of issuing construction permits is unified, and the investors will be able to finish the whole procedure before a single authority – their local self-government unit. The investors will not have to conduct 16 separate procedures before public authorities in order to obtain a construction permit, and the responsibility for these procedures will be completely in the hands of the local authorities. Local self-government units will now act as one-stop-shops.

An additional benefit for investors should be limitation of the responsibility of local self-government units for mistakes in designs, and increasing the responsibility of investors and designers. Changing the balance of responsibility will most certainly encourage local authorities to speed up the work on issuing construction permits, since the risk of mistakes in designs will be transferred to the investor and designer.

Amendments of the Law on Spatial Planning and Construction also decrease the formality of the approvals necessary for designing. A prior location permit which was previously necessary for starting the designing phase has now been changed to location conditions, and it will be possible to obtain location conditions and start the designing phase of construction regardless of the proprietary status of the location. Brave investors will be able to work on designing and resolving of proprietary issues at the same time, which should shorten the overall process of the projects.

The new procedural rules on issuing construction permits will certainly improve the ranking of the Republic of Serbia in the World Bank's Doing Business Report.

The problem of conversion of right of use to right of ownership has not been resolved by the amendments of the Law on Spatial Planning and Construction. Considering that introducing conversion into the existing Law on Spatial Planning and Construction was the main obstacle for further development and the subject of numerous public criticisms, it is clear that resolving this problem is not easy. The amendments of the Law on Spatial Planning and Construction specify that conversion (with consideration) will be regulated by a separate law. Fortunately, the amendments of the law allow construction permits to be issued to holders of the right of use, which will protect the acquired rights of the investors having right of use until the law regulating conversion is adopted.

What to expect?

The amendments of the Law on Spatial Planning and Construction should speed up the procedure of issuing construction permits and decrease the overall duration of projects. Investors with registered right of use will be able to continue their projects which were blocked by the existing Law on Spatial Planning and Construction, since right of use will be adequate title for obtaining a construction permit. Implementation of the amendments relating to procedures of issuing construction permits should be efficient, due to the simultaneous adoption of the respective bylaw.

However, absence of a final resolution of the conversion problem will create obstacles for achieving long-term objectives. Most attractive locations for development in Serbia, especially in Belgrade, are under the regime of right of use. As right of use is not transferable, potential investors will not be able to acquire such locations. Right of use will also be an obstacle for project financing when it comes to existing investors.

If the law regulating conversion with consideration is not adopted soon, the amendments of the law will not have the desired result of attracting foreign investments. Even if the Republic of Serbia makes some progress on the World Bank's Doing Business Report for 2015 or 2016 due to organizing one-stop-shops, without resolving the conversion problem, the amendments of the Law on Spatial Planning and Construction will not have their full effect.

COMMENTED BY: IVAN PETROVIC, ATTORNEY AT LAW JPM JANKOVIĆ POPOVIĆ MITIĆ
LAW OFFICE