



# ICLG

The International Comparative Legal Guide to:

## Real Estate 2016

**11th Edition**

A practical cross-border insight into real estate law

Published by Global Legal Group, with contributions from:

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**GLG Cover Design**

F&amp;F Studio Design

**GLG Cover Image Source**

iStockphoto

**Printed by**

Ashford Colour Press Ltd  
February 2016

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No photocopying

ISBN 978-1-910083-79-6

ISSN 1749-4745

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**General Chapter:**

1	<b>Warranty and Indemnity Insurance in the UK Real Estate Market</b> – Shona Grey, Herbert Smith Freehills LLP	1
---	---	---

**Country Question and Answer Chapters:**

2	<b>Australia</b>	Herbert Smith Freehills: David Sinn	5
3	<b>Austria</b>	Kubes Passeyrer Attorneys at Law: David Kubes	14
4	<b>Bosnia &amp; Herzegovina</b>	Law Office Dalibor Mrša: Dalibor Mrša	21
5	<b>Brazil</b>	Demarest Advogados: Adriana Khalil Daiuto	33
6	<b>Bulgaria</b>	New Balkans Law Office: Kamen Shoylev & Irina Stoyanova	44
7	<b>Canada</b>	Osler, Hoskin & Harcourt LLP: Heather McKean & Stella Di Cresce	52
8	<b>Croatia</b>	Law Office Lacmanović: Natalija Lacmanović	63
9	<b>Cyprus</b>	Andreas Demetriades & Co LLC: Demetris Demetriades	72
10	<b>Czech Republic</b>	Gürlich & Co.: Richard Gürlich, Ph.D. & Katerina Benasova	81
11	<b>England &amp; Wales</b>	Herbert Smith Freehills LLP: Kathryn Oie & Michelle Howie	88
12	<b>France</b>	McDermott Will & Emery: Bertrand Delafaye & Jean-Marc Tirard	99
13	<b>Germany</b>	Herbert Smith Freehills Germany LLP: Johann Rumetsch & Stefanie Herkert	109
14	<b>Greece</b>	KG Law Firm: Gus J. Papamichalopoulos & Elia D. Iconomidou	117
15	<b>India</b>	Kanga & Company: Shailesh S. Vaidya & Kunal S. Vaidya	127
16	<b>Indonesia</b>	Ali Budiardjo, Nugroho, Reksodiputro: Nafis Adwani & Agus Ahadi Deradjat	137
17	<b>Ireland</b>	Maples and Calder: Diarmuid Mawe & Craig Kenny	144
18	<b>Israel</b>	Ziv Lev & Co. Law Office: Moshe Merdler & Ziv Lev	156
19	<b>Japan</b>	Nishimura & Asahi: Hideaki Ozawa & Takahiro Yokota	165
20	<b>Kazakhstan</b>	AB Legal LLP: Botakoz Dykanbayeva	175
21	<b>Mexico</b>	Portilla Ruy-Díaz y Aguilar, S.C.: Iván Guerrero Sánchez & Gonzalo Eugenio Ruy-Díaz Benhumea	184
22	<b>New Zealand</b>	Duncan Cotterill: Paul Calder & Karen Overend	192
23	<b>Peru</b>	Miranda & Amado: Claudia Lucena Mayorga & Daniel Corzo Simons	200
24	<b>Poland</b>	Greenberg Traurig Grzesiak sp.k.: Agnieszka Stankiewicz	209
25	<b>Portugal</b>	Vieira de Almeida & Associados: Pedro Ferreirinha	218
26	<b>Puerto Rico</b>	Ferraiuoli LLC: Eduardo Tamargo-Motroni & María del Rosario Fernández-Ginorio	226
27	<b>Romania</b>	Pachiu & Associates: Ana-Maria Goga & Radu Noslacan	233
28	<b>Serbia</b>	Petrić & Partneri AOD in cooperation with CMS Reich-Rohrwig Hainz: Marija Marošán & Đorđe Popović	242
29	<b>Slovenia</b>	Brulc, Gaberščik in Kikelj o.p., d.o.o.: Damijan Brulc & Maja Perpar	251
30	<b>South Africa</b>	Norton Rose Fulbright South Africa Inc.: Pieter H. Niehaus	259
31	<b>Spain</b>	Hogan Lovells: Emilio Gómez Delgado	267
32	<b>Switzerland</b>	Meyerlustenberger Lachenal: Wolfgang Müller & Christian Eichenberger	276
33	<b>USA</b>	Greenberg Traurig, LLP: Christina Braisted Rogers	283

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# Serbia

Marija Marošan



Dorđe Popović



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## 1 Real Estate Law

**1.1 Please briefly describe the main laws that govern real estate in your jurisdiction. Laws relating to leases of business premises should be listed in response to question 10.1. Those relating to zoning and environmental should be listed in response to question 11.1.**

- Law on Basic Property Relations – sets conditions for the establishment, protection and termination of property rights.
- Law on Conveyance of Real Estate – sets conditions for conveyance of real estate, the obligation of notarisation of the sale and purchase agreement, pre-emption rights, etc.
- Law on Real Estate Survey and Cadastre – regulates state survey, land cadastre, real estate cadastre, cadastre of utilities, registration of real estate rights, and their maintenance and update.
- Law on Public Notary – regulates organisation, operation, manner and conditions of the work of a public notary.

**1.2 What is the impact (if any) on real estate of local common law in your jurisdiction?**

There is no impact of local common law on real estate.

**1.3 Are international laws relevant to real estate in your jurisdiction? Please ignore EU legislation enacted locally in EU countries.**

As a matter of principle, international laws are not relevant to real estate in Serbia.

## 2 Ownership

**2.1 Are there legal restrictions on ownership of real estate by particular classes of persons (e.g. non-resident persons)?**

Under Serbian law, any domestic natural person or legal entity may acquire an ownership right over a real estate such as residential and commercial buildings, apartments, business premises, garages, parking places (within the building), land plots and other real estate, except over natural resources which are subject to state ownership. In addition to that, Serbian legislation prescribes that some resources

in general use, as well as forests and forestland, may be subject to ownership rights under limitations defined by law. Also, agricultural land cannot be owned by a foreign natural person or legal entity.

Foreign natural persons and legal entities are allowed to acquire title to real estate, but under additional requirements – foreign natural persons and legal entities that perform business activities in the territory of the Republic of Serbia may, under the conditions of reciprocity, acquire real estate necessary for the performance of their business activities. The existence of reciprocity between the Republic of Serbia and country of origin of the foreign natural person or legal entity has to be confirmed by the Ministry of Justice.

However, even if all the above-mentioned conditions are met, the state may still forbid the acquisition of real estate in certain areas (e.g. due to the vicinity of military facilities, etc.).

## 3 Real Estate Rights

**3.1 What are the types of rights over land recognised in your jurisdiction? Are any of them purely contractual between the parties?**

Serbian law recognises several forms of interests in real estate. These include:

- ownership;
- possession; and
- *iura in re aliena* i.e. limited property rights, such as pledges (i.e. mortgage), easements (which can be personal or real), leases, right to build, pre-emptive rights, etc.

None of these rights are purely contractual as they can be constituted based on the mutual consent of the relevant parties, but also based on the law. This is to say that the legal basis for the establishment of these rights may be either a contract or the relevant law.

**3.2 Are there any scenarios where the right to a real estate diverges from the right to a building constructed thereon?**

Until 2009, Serbian law provided that state-owned city construction land could only be used either:

- (i) in the case of undeveloped city construction land – a permanent right of use (after 2003: a long-term lease); or
- (ii) in the case of developed city construction land – an ownership title with respect to a facility built on such land for which all necessary construction and use permits have been obtained.

Thus, prior to 2009, it was not possible to obtain an ownership right over city construction land, but only right of use. Buildings erected on state-owned land could be privately owned, and the private owners of the buildings enjoy perpetual right of use to the state-owned land under the building to the extent necessary for use of the building. During the conveyancing process relating to a building constructed on state-owned city construction land, the land under the building and the land necessary for the use of the building are automatically included in the transaction.

In 2009, a new Law on Planning and Construction entered into force. Under this law, pre-existing rights to use city construction land were converted into rights of ownership, provided that the titleholder was properly registered in the land registry and no conversion surcharge was payable. Generally, a conversion surcharge was payable if the right to use belonged to an entity undergoing either privatisation, bankruptcy or enforcement proceedings, or if undeveloped city construction land was acquired or awarded for the purpose of development prior to May 13, 2003.

In October 2013, the Serbian Constitutional Court repealed the above-mentioned law with respect to entities undergoing privatisation, bankruptcy or enforcement proceedings. After that, the conditions for conversion of right of use into ownership right have been prescribed by the amendments to the Law on Planning and Construction that came into force in December 2014. More or less, the same rules apply to the conversion under the current legislation as in 2009 (with respect to holders of right of use); only the method for determining the conversion surcharge and the conversion procedure have changed. Procedure for conversion without surcharge is now regulated by the Law on Planning and Construction, while the conversion with surcharge is regulated by the recently adopted Law on Conversion of Right of Use into Ownership Right over Construction Land with Surcharge.

## 4 System of Registration

### 4.1 Is all land in your jurisdiction required to be registered? What land (or rights) are unregistered?

All land in Serbia is required to be registered in the land registry. However, in practice, certain portions of real estate are not registered as, due to historical reasons and inefficiency of public administration, some of the entries in the land registries are outdated.

### 4.2 Is there a state guarantee of title? What does it guarantee?

The state guarantees title by providing compensation for loss that occurs through non-authentic registration or by errors in the operation of the registration system.

### 4.3 What rights in land are compulsorily registrable? What (if any) is the consequence of non-registration?

Pursuant to the Law on State Survey and Cadastre, all rights in land and/or changes in rights in land have to be registered in the land registry within 30 days from the date they occurred. If the said statutory deadline is not complied with, the owner of the relevant real estate can be fined with a penalty of EUR 800 to EUR 2,000 (for legal entities) and EUR 80 to EUR 400 (for natural persons). However, non-compliance with this obligation is rarely (if almost never) penalised in practice.

### 4.4 What rights in land are not required to be registered?

All rights in land are required to be registered. However, although the Law on State Survey and Cadastre envisages registration of both short-term and long-term lease agreements in the land registry, in practice only long-term lease agreements (longer than 10 years) are registered in the land registry.

### 4.5 Where there are both unregistered and registered land or rights is there a probationary period following first registration or are there perhaps different classes or qualities of title on first registration? Please give details. First registration means the occasion upon which unregistered land or rights are first registered in the registries.

Serbian law is not familiar with this concept.

### 4.6 On a land sale, when is title (or ownership) transferred to the buyer?

A title over land (and any other real property) is acquired by means of registration in the land registry i.e. the registration has a constitutive effect. In order for the new owner to be able to register the land in the land registry, the seller has to provide the purchaser with the so-called "*clausula intabulandi*" – a provision authorising registration of the new owner in the land registry. Such provision may be either included in the contract or attached to it as a separate statement.

### 4.7 Please briefly describe how some rights obtain priority over other rights. Do earlier rights defeat later rights?

Priority rights are determined based on the date and time the request for registration was submitted to the competent land registry.

## 5 The Registry / Registries

### 5.1 How many land registries operate in your jurisdiction? If more than one please specify their differing rules and requirements.

The land registry operating in Serbia is called the real estate cadastre. The real estate cadastre has been developed in Serbia over the last 20 years. Prior to that, "technical" data on real estate were registered in the land cadastre, while "legal" data were registered in land books. The real estate cadastre is a unified registry which contains both "technical" data (from the land cadastre) and "legal" data (from the previous land registry). The real estate cadastre has now been established in the majority of cadastral municipalities in Serbia.

### 5.2 Does the land registry issue a physical title document to the owners of registered real estate?

No, the land registry does not issue a physical title document to the owners of registered real estate. However, upon request the land registry issues land registry excerpts from which the most important data on real estate can be determined.



### 5.3 Can any transaction relating to registered real estate be completed electronically? What documents need to be provided to the land registry for the registration of ownership right? Can information on ownership of registered real estate be accessed electronically?

Transactions relating to registered real estate cannot be completed electronically. However, there is an online database of all real estate in Serbia kept by the Republic Geodetic Authority (the public institution responsible for the management of the land registry). The database can be searched by cadastral parcel number and address (street and house number) inside the municipality and cadastral municipality. The database only provides users with basic information on real estate and real estate owners.

A legal entity or natural person wishing to register his ownership right in the land registry has to submit to the competent real estate cadastre office the following:

- a request for registration specifying the relevant real estate data (e.g. cadastral parcel, cadastral municipality, number of building/special unit, etc.);
- a conveyance instrument (e.g. sale and purchase agreement, court decision, etc.);
- proof of full payment of the purchase price (as applicable); and
- proof of payment of relevant registration fees.

It is also possible to claim title to “non-registered” real estate and seek subsequent registration of ownership in the land registry, provided that the applicant for registration provides the following documents:

- a final occupancy permit for the real estate;
- an unbroken chain of title from the holder of the occupancy permit until the ultimate owner of the real estate; and
- supplemental documents referred to above.

### 5.4 Can compensation be claimed from the registry/registries if it/they makes a mistake?

Compensation can be claimed from the land registry (i.e. the Republic Geodetic Authority – the state authority responsible for maintenance of the land registry) pursuant to general rules regulating responsibility of the state/state authorities towards citizens.

### 5.5 Are there restrictions on public access to the register? Can a buyer obtain all the information he might reasonably need regarding encumbrances and other rights affecting real estate?

No, there are no restrictions on public access to the registry and a potential buyer can freely obtain all the necessary information.

## 6 Real Estate Market

### 6.1 Which parties (in addition to the buyer and seller and the buyer's finance provider) would normally be involved in a real estate transaction in your jurisdiction? Please briefly describe their roles and/or duties.

Pursuant to the Law on Public Notary, agreements on conveyance of real estate must be either (i) drafted (in a form of notary deed), or (ii) notarised (i.e. solemnised) by a public notary on whose territory the real estate is located.

### 6.2 How and on what basis are these persons remunerated?

Notaries are remunerated based on the value of the relevant sale and purchase agreement. If the notary did not draft the agreement, but only notarised (i.e. solemnised) it, the notary is entitled to 60% of the standard notary tariff.

### 6.3 Do you feel there is a noticeable increase in the availability of capital to finance real estate transactions in your jurisdiction, whether equity or debt? What are the main sources of capital you see active in your market?

As a general matter, in the last couple of years there has been no significant increase in the availability of capital to finance real estate transactions in Serbia.

Still, there are a couple of notable movements on the market that may result in such increases in the forthcoming period, including the following:

- as a result of the increasing restructuring processes in the financial sector (involving mostly banks, leasing companies and some other financing institutions), there is an ongoing increase in sales of NPL and related portfolios, which often results in the sale of underlying collaterals, including valuable real estate assets;
- there is an increasing trend of Middle East-based capital entering the Serbian real estate market, the “*Belgrade Waterfront*” project being the most prominent example. This project is publicly stated by Serbian officials to be eventually worth more than EUR 3 billion, involving partnership between Serbian and UAE companies in the construction and subsequent sale of a major commercial and housing real estate complex at a prime location in Belgrade. However, despite excessive public announcements, this project is still in the nascent phases and has triggered significant public debate on its overall transparency and feasibility; and
- there also appears to be a notable increase in both equity and debt-based financing of projects in specific industries, the renewable energy business (most prominently, development of large-scale wind farms) being an example.

### 6.4 What is the appetite for investors and developers in your region to look beyond primary real estate markets and transact business in secondary or even tertiary markets? Please give examples of significant secondary or tertiary real estate transactions, if relevant.

In general terms, investors and developers are still predominantly focusing on primary real estate markets, the most notable activities still being undertaken in the prime commercial locations in major Serbian cities.

Still, as indicated above, certain sector-specific industries attract investments and developments in the secondary and even tertiary markets, the main example being investments into development of wind farms and other renewable facilities that are mainly located outside city centres and, in certain cases, on tertiary locations (vicinity of villages, etc.).

## 6.5 Have you observed any trends in particular market sub sectors slowing down in your jurisdiction in terms of their attractiveness to investors/developers? Please give examples.

The general impression is that the traditional subsectors of commercial real estate and housing are experiencing a decrease in overall activity levels.

Examples include a couple of newly-built commercial real estate complexes located on prime locations in Belgrade, still lacking both buyers and lessees.

## 7 Liabilities of Buyers and Sellers in Real Estate Transactions

### 7.1 What (if any) are the minimum formalities for the sale and purchase of real estate?

Agreement on the sale and purchase of a real estate has to be concluded in writing and notarised before the competent notary, i.e. the notary on whose territory the real estate is located. This legal requirement also applies to all future amendments to the agreement.

If an agreement on the sale and purchase of real estate was executed in writing, but was not notarised, the court may recognise the legal effects of that agreement on condition that:

- the agreement was partially or fully performed; and
- no compulsory regulation or pre-emptive right of a third party was violated.

### 7.2 Is the seller under a duty of disclosure? What matters must be disclosed?

The seller is responsible for the defects existing at the time of conveyance of the real estate, no matter whether the seller was aware of those defects or not. However, the seller will not be held liable to the buyer if such defects could have been noticed by the buyer.

### 7.3 Can the seller be liable to the buyer for misrepresentation?

Yes, the seller is liable to the buyer (even for defects that the buyer could have reasonably noticed), if the seller knew that there was a defect and intentionally made a false representation.

### 7.4 Do sellers usually give contractual warranties to the buyer? What would be the scope of these? What is the function of warranties (e.g. to apportion risk, to give information)? Are warranties a substitute for the buyer carrying out his own diligence?

Yes, sellers usually give contractual warranties to buyers with respect to unrestricted ownership over the real estate, legal and actual conditions of the real estate, encumbrances constituted over the real estate, etc. The function of these warranties is to apportion a risk. However, every prudent buyer that has an intention to buy real estate should conduct an extensive legal due diligence of all obtainable documentation and evidence concerning the real estate in question.

### 7.5 Does the seller warrant its ownership in any way? Please give details.

A typical sale and purchase agreement usually contains the seller's warranty that it is the sole unrestricted owner of the real estate and that the real estate is and will remain in the (legal and actual) condition described in the agreement until registration of the purchaser's title in the land registry.

### 7.6 What (if any) are the liabilities of the buyer (in addition to paying the sale price)?

The parties may agree that the buyer pays the property transfer tax. However, if the buyer does not fulfil his contractual obligation, the seller would still be liable for the tax, as pursuant to Serbian law, tax liability lies with the seller of the real estate.

## 8 Finance and Banking

### 8.1 Please briefly describe any regulations concerning the lending of money to finance real estate. Are the rules different as between resident and non-resident persons and/or between individual persons and corporate entities?

The regulations do not, as such, differentiate between lending money for real estate and other lending.

The main pieces of legislation that regulate lending are:

- Law on Contracts and Torts;
- Law on Banks;
- Law on Protection of Financial Services' Consumers; and
- by-laws adopted under these principal pieces of legislation.

#### Resident vs. non-resident lending

Any cross-border loan (e.g. a loan granted by a non-resident to a Serbian resident) has to be registered with the National Serbian Bank. Also, the repayment or voluntary prepayment of any cross-border loan is subject to the following payment restrictions: (i) the loan must have a minimum term of twelve months; and (ii) any repayment or voluntary prepayment of the loan must not occur prior to the expiration of six months from the date the loan was disbursed. Also, upstream loans of Serbian companies to non-Serbian companies, and upstream guarantees by Serbian companies for obligations of non-Serbian companies, are not permitted.

#### Individuals vs. corporate lending

In principle, lending to individuals may be done only by licensed banks, whilst lending to corporates may also be done by shareholders and other corporate entities (inter-company loans).

### 8.2 What are the main methods by which a real estate lender seeks to protect itself from default by the borrower?

The main collateral typically used when financing real estate in Serbia is a mortgage, which in principle may be established both over existing real estate and over real estate in construction.

Apart from mortgage, the following collaterals are typically used:

- pledge over shares in the borrower or its related entity;
- pledge over accounts, claims, movables and/or other property;
- restrictions in the incorporation acts of the borrower in favour of the lender;

- guarantees, including bank guarantees; and
- promissory notes.

### 8.3 What are the common proceedings for realisation of mortgaged properties? Are there any options for a mortgagee to realise a mortgaged property without involving court proceedings or the contribution of the mortgagor?

Mortgages may, under Serbian law, in principle be established either as (i) court mortgages, i.e. judicial mortgages, (ii) out-of-court mortgages. Consequently, mortgages may be enforced in two different ways, i.e. by way of (i) court, i.e. judiciary enforcement, or (ii) out-of-court enforcement. As a matter of principle, please note that the creditor may enforce claims out of court only if such manner is envisaged in the relevant security documents, while the court enforcement is generally an option that is available to the creditor in either case (i.e. be it specifically envisaged in the documents or not).

#### Court enforcement

In case of enforcement of the court mortgage, the relevant property may be sold in the manner of a direct deal or public auction. In case of a public auction, at the first auction the minimum opening price would have to be at least 60% of the estimated value of the property (with such value determined by a reputable entity typically engaged in property appraisals). If the first auction is unsuccessful, the minimum opening price at the second auction would have to be at least 30% of the estimated value. If the second auction is unsuccessful as well, the relevant creditor/mortgagee would be allowed to opt for the ownership over the real estate to be transferred to it (in that case, it would be deemed that the creditor has been compensated in an amount equalling 30% of the appraised value of the property).

#### Out-of-court enforcement

The out-of-court procedure could also be performed by way of a direct deal or a public auction. Unless otherwise agreed, the minimum opening price in the auction would have to be at least 75% of the appraised value of the property (or 60% in the second auction attempt – if the first attempt to auction the property has failed). The creditor would be allowed to participate in the public auction.

### 8.4 What minimum formalities are required for real estate lending?

As a rule, the loan agreement has to be executed in written form.

Also, if the loan agreement involves establishment of titles over real estate (e.g. mortgage), such loan agreement also has to be properly notarised.

Moreover, as noted above, any cross-border lending needs to be registered with the National Bank of Serbia.

### 8.5 How is a real estate lender protected from claims against the borrower or the real estate asset by other creditors?

The level of protection of lender against other creditors' claims towards both the borrower and its real estate will largely depend on the type and time of establishment of the relevant collateral. This generally holds true for both enforcement procedures and bankruptcy proceedings.

For instance, if the lender's loan is secured by the first rank mortgage and/or the first rank pledge over other assets of the borrower (including the pledge over its shares), the lender will have priority in the satisfaction of its (due) claims from the relevant property

compared to all other creditors (including both the ones having collaterals of lower rank and non-secured creditors). Conversely, a lender having lower rank of collateral will, as a rule, bear a risk that creditors having higher-rank collateral will take priority.

## 9 Tax

### 9.1 Are transfers of real estate subject to a transfer tax? How much? Who is liable?

The transfer of real estate is, as a rule, subjected to the real estate transfer tax ("RETT") at a 2.5% rate. This tax is payable by the seller of the property. The tax base is the sale price of the property, but the Tax Authority may adjust the tax base if the sale price is below estimated market value.

### 9.2 When is the transfer tax paid?

Entry into a real estate transfer agreement (e.g. sale/purchase agreement) or the buyer starting to use the property triggers the tax liability. The taxpayer must file a tax return within 30 days from such a taxable moment. The RETT is payable within 15 days from the date of the decision of the Tax Authority.

### 9.3 Are transfers of real estate by individuals subject to income tax?

Transfer of real estate by individuals is not subject to income tax, but if the transfer results in capital gains, those will be taxed at a 15% rate, unless otherwise provided for in an applicable double tax treaty.

### 9.4 Are transfers of real estate subject to VAT? How much? Who is liable? Are there any exemptions?

Transfer of real estate is subject to VAT in two cases: (i) on first transfer of newly built property, provided that the transferee is allowed to deduct input VAT; and (ii) if the parties contractually agree to apply VAT, provided that the parties are VAT registered taxpayers and the buyer can deduct input VAT.

Such transfers are taxed at a 20% rate, except for residential properties which are taxed at a reduced 10% rate.

The VAT is payable by the 15th of the month for the previous month/quarter (depending on the status of the VAT payer).

Transfer of business as a going concern is VAT-exempt. Still, if the transferee ceases to fulfil the condition for such an exemption in the following three-year period, it is required to charge VAT on such transfer.

Transfers subject to VAT are exempt from RETT and *vice versa*.

### 9.5 What other tax or taxes (if any) are payable by the seller on the disposal of a property?

Transfer of real estate may be subject to inheritance tax and gift tax. Both are payable by the recipient of the real estate. The tax rate for inheritance tax and gift tax depends on whether the recipient is considered to be in the second hereditary order (1.5%) or further hereditary orders (2.5%) in relation to the donor/deceased.

Also, please note that the real estate sale agreements are subject to mandatory notarisation in Serbia. Hence, a notarisation fee of an amount dependent on the value of the property is applicable as well.

## 9.6 Is taxation different if ownership of a company (or other entity) owning real estate is transferred?

Besides transfer of business as a going concern, ownership change via share transfer is only taxable if the transferor realises capital gains. Still, certain double tax treaties provide for an exemption if a non-resident realises capital gains from sale of shares, where less than 50% of the shares' value is derived from real estate located in Serbia.

## 10 Leases of Business Premises

### 10.1 Please briefly describe the main laws that regulate leases of business premises.

Serbian legislation does not differentiate between different types of leases (e.g. commercial, retail, residential), meaning that all those types of leases are regulated by the same law – the Law on Contracts and Torts.

However, lease agreements where the landlord is a public authority (e.g. state, autonomous province, municipality, or public entity) may be subject to additional requirements when it comes to their execution, because these cases are further regulated by the Law on Public Assets. Yet, even in such cases, the rights and obligations of the parties are governed by the Law on Contracts and Torts.

### 10.2 What types of business lease exist?

Please see the answer to question 10.1.

### 10.3 What are the typical provisions for leases of business premises in your jurisdiction regarding: (a) length of term; (b) rent increases; (c) tenant's right to sell or sub-lease; (d) insurance; (e) (i) change of control of the tenant; and (ii) transfer of lease as a result of a corporate restructuring (e.g. merger); and (f) repairs?

#### Length of term

The Law on Contracts and Torts provides that a lease agreement may be concluded for either a fixed or an indefinite term, but it does not prescribe the minimum or maximum duration of agreements concluded for a fixed term.

Lease agreements concluded for a fixed term are considered to be converted into a lease for an indefinite term if the tenant continues to use the leased premises after the expiry of the initially agreed fixed term.

#### Rent increases

Lease agreements commonly provide for indexation of the rent. In addition, a rent can be revised based on a general provision of the Law on Contracts and Torts regulating termination or amendment of an agreement due to hardship. Based on this provision, if events have rendered performance by one party more onerous after conclusion of the agreement than would reasonably have been anticipated when the agreement was concluded, i.e. if its performance has become excessively burdensome due to an event beyond the party's reasonable control which it could not reasonably have been expected to have taken into account, the relevant party may ask the courts to grant termination or renegotiation of the agreement.

#### Tenant's right to sell or sublease

Under the Law on Contracts and Torts, subleasing does not require the landlord's consent, unless the lease agreement in question specifically prohibits subleasing.

The Law on Contracts and Torts does not regulate the issue of transfer of lease by the tenant. However, in practice, landlords prohibit such transfers.

#### Insurance

The Law on Contracts and Torts does not regulate this issue. However, in practice, the cost of property insurance for the building is included in the service charge and thus reimbursed to the landlord by the tenant. Also, the tenant is usually required, on its own account and in its own name, to take out, e.g., insurance covering contents and liabilities, including the furniture and goods located inside the leased area, employers' liability insurance, civil and third party liability insurance, etc.

#### Change of control of the tenant

This issue is not regulated by the Law on Contracts and Tort. Also, this issue is not regularly regulated by lease agreements. In general, lease agreements may envisage that the tenant will be obliged to notify the landlord in case of change of control of the tenant.

#### Transfer of lease as a result of a corporate restructuring (e.g. merger)

Lease agreements usually envisage that rights and obligations of the landlord under the lease agreement can be assumed by its legal successors or assignees, as notified to the tenant, and the tenant undertakes, upon request of the landlord, to sign the assignment and assumption agreement. Also, it is usual that the tenant waives its right to terminate the lease agreement due to transfer of the title over the leased premises.

#### Repair

The landlord is obliged to maintain the premises in proper condition and to perform any necessary repairs. The landlord is also obliged to compensate the tenant for costs incurred for repairs that fall under the scope of the landlord's duty.

However, the costs of smaller repairs caused by regular use of the premises, and the costs of the use itself, are borne by the tenant.

### 10.4 What taxes are payable on rent either by the landlord or tenant of a business lease?

Both rent and service charges are subject to 20% VAT, payable by the tenant.

### 10.5 In what circumstances are business leases usually terminated (e.g. at expiry, on default, by either party etc.)? Are there any special provisions allowing a tenant to extend or renew the lease or for either party to be compensated by the other for any reason on termination?

#### Early termination by the landlord

Lease agreements concluded for an indefinite term may be terminated at any time (except an inopportune time), while fixed-term lease agreements may only be terminated on statutory grounds and on the grounds specified in the relevant lease agreement.

A lease agreement may be terminated by the landlord if the tenant:

- does not use the rented premises in an appropriate manner;
- does not pay the rent within 15 days after the landlord's notice; or
- sublets the property without the landlord's consent.

#### Early termination by the tenant

A tenant may terminate the lease agreement if:

- the use of the premises is substantially diminished;
- the landlord has sold the leased premises;



- a third party claiming the right of ownership over the leased premises is limiting the tenant's rights under the agreement; or
- the leased premises have some deficiency that cannot be eliminated.

In addition, in accordance with the general rule mentioned above, a tenant may terminate a lease agreement concluded for an indefinite term at any time (except an inopportune time). Fixed-term lease agreements may also be terminated by the tenant on the grounds specified in the relevant lease agreement.

If the lease agreement is terminated due to the other party's fault, the party terminating the agreement is entitled to compensation of damages.

#### 10.6 Does the landlord and/or the tenant of a business lease cease to be liable for their respective obligations under the lease once they have sold their interest? Can they be responsible after the sale in respect of pre-sale non-compliance?

The landlord and tenant continue to be liable for their respective obligations under the lease once they have sold their interest, and they are responsible for pre-sale non-compliance.

#### 10.7 Green leases seek to impose obligations on landlords and tenants designed to promote greater sustainable use of buildings and in the reduction of the "environmental footprint" of a building. Please briefly describe any "green obligations" commonly found in leases stating whether these are clearly defined, enforceable legal obligations or something not amounting to enforceable legal obligations (for example aspirational objectives).

Green obligations are not commonly found in leases in Serbia.

### 11 Public Law Permits and Obligations

#### 11.1 What are the main laws which govern zoning and related matters concerning the use and occupation of land? Please briefly describe them and include environmental laws.

Law on Planning and Construction – regulates the conditions and manner of spatial planning and development, the development and use of construction land, and the construction of facilities, etc.

Law on Protection of Environment – sets the rules for sustainable management and preservation of environmental balance, wholeness, diversity and quality of the environment and prevention, control, diminishment and rehabilitation of all forms of environmental pollution.

Law on Waste Management – provides the principal rules for waste management in Serbia.

Law on Integrated Prevention and Control of Pollution of Environment – regulates the conditions and procedures for issuing integrated permits for installations and activities that may have adverse effects on human health, the environment or material goods, types of activities and facilities, monitoring and other issues of importance for the prevention and control of pollution.

#### 11.2 Can the state force land owners to sell land to it? If so please briefly describe including price mechanism.

The state is allowed to force land owners to sell land to it under the

conditions of the Law on Expropriation. The Law envisages that real estate may be expropriated (or the ownership restricted), only in the public interest determined on the basis of the Law, against compensation which may not be lower than the market price of the expropriated real estate. The public interest for expropriation of real estate can be determined by law or by decision of the Government.

#### 11.3 Which bodies control land/building use and/or occupation and environmental regulation? How do buyers obtain reliable information on these matters?

Information on these matters can be obtained from the city/municipal authority responsible for the issuance of construction permits in the territory in which the facility is going to be constructed. The so-called "information on location" is issued by the competent authority upon the request of an investor and contains general zoning parameters for development on the basis of applicable zoning ordinances. This document serves as information only and its obtainment is not mandatory.

#### 11.4 What main permits or licences are required for building works and/or the use of real estate?

The main real estate permits in Serbia are (i) construction permits, allowing an investor to start construction, and (ii) use permits, allowing an investor to use property after the construction is fully completed and the property is ready for use, as determined by competent authorities in the procedure of technical acceptance.

In some specific cases, additional permits will additionally be required (e.g. an energy permit allowing for construction of energy facilities).

#### 11.5 Are building/use permits and licences commonly obtained in your jurisdiction? Can implied permission be obtained in any way (e.g. by long use)?

In Serbia, it is still not uncommon that a facility is constructed without a construction permit and used without a use permit. If a building is not covered by a construction or use permit it must be legalised. In this regard, the term "legalisation" refers to the process of obtaining the authorities' retroactive approval for a building that was originally built without a valid construction permit and/or used without a use permit.

#### 11.6 What is the appropriate cost of building/use permits and the time involved in obtaining them?

The costs associated with obtaining a construction/use permit will – to a significant extent – depend on the nature of the property in question and its overall complexity. This is because the underlying project documentation (as a pre-requisite for obtainment of these permits) might be numerous if there are complex facilities (e.g. energy facilities, communal facilities, etc.). While the very administrative fees payable for submission of requests to obtain these permits will typically amount to approximately EUR 15, the preparation of overall documentation and costs related to payment of other applicable fees (e.g. development fees) will typically amount to several thousand Euros.

The statutory deadline for issuance of both a construction and use permit is five working days following submission of all required documentation. In practice, this period may be significantly longer.

### 11.7 Are there any regulations on the protection of historic monuments in your jurisdiction? If any, when and how are they likely to affect the transfer of rights in real estate?

Yes, the most important one being the Law on Cultural Goods, setting out the main rules for protection and usage of objects considered thereunder to be 'cultural goods'.

As a matter of principle, the properties that are considered to be 'cultural goods' of a certain type/degree (e.g. 'historic monuments', 'spatial cultural-historical units', 'archaeological sites', etc.) are subject to a specific legal regime and may be used only pursuant to such regime. This predominantly refers to specific obligations of owners/users of such property as to the manner of refurbishment, adaptation and other construction works on such properties, those being generally subject to the scrutiny of public authorities and allowed only to the extent that they are not considered to diminish the property's value and overall composition. In addition, some further obligations may be imposed regarding the mandatory public display of such properties, and the like.

It is generally allowed to dispose of such properties (if they are already privately owned), but the acquirer will incur the specific obligations noted above and, as a rule, will also be obliged to comply with them.

### 11.8 How can e.g. a potential buyer obtain reliable information on contamination and pollution of real estate? Is there a public register of contaminated land in your jurisdiction?

There are several public registries in Serbia which maintain data relating to contamination and pollution of real estate. Also, all of the data relevant for possible contamination of land are, in principle, available to the general public, so a potential buyer may request to obtain such data (in addition to data already kept with the registries) from public authorities, and the public authorities will be obliged to provide them within statutory deadlines (usually being 30 days from the submission of the respective request).

### 11.9 In what circumstances (if any) is environmental clean-up ever mandatory?

Owners and/or users of real estate are generally obliged to use real estate in compliance with all applicable environmental regulations. This equally applies to waste management, prevention of air, land and water pollution, compliance with noise level requirements and performance of any works pursuant to environmental requirements.

Consequently, the environmental clean-up (including, without limitation, implementation of environmental facilities and measures) will in principle be mandatory for any user of real estate if the relevant real estate is polluted, contaminated or otherwise in breach of such environmental requirements.

In addition, certain sector-specific requirements may also apply to specific real estate, an example being the obligation to re-cultivate the land used for mining operations after expiry of the allowed period of exploitation.

### 11.10 Please briefly outline any regulatory requirements for the assessment and management of the energy performance of buildings in your jurisdiction.

The assessment and management of the energy performance of buildings in Serbia is principally governed by the Law on Efficient

Use of Energy and accompanying legislation. The said law, *inter alia*:

- makes the energy audit (to be done by licensed energy experts) mandatory in respect of: (i) facilities used by the public 'obligors of the energy management system' (having more than 500m<sup>2</sup> of usable area); (ii) facilities and their respective parts that are classified within the prescribed energy classes; and (iii) facilities and their respective parts in case of change of their purpose or owner or if they are intended for renting;
- obliges entities applying for issuance of: (i) an energy permit for construction or reconstruction of facilities for production of electricity and/or heating, as well as for transmission of electricity or transport/distribution of natural gas; and/or (ii) a construction permit for the construction or reconstruction of real estate for distribution of electricity or heating energy, to provide details of the energy efficiency of such facilities proving that the criteria setting the minimum energy efficiency of the system are complied with;
- prescribes the criteria and manner of labelling of energy efficiency of products which consume energy, as well as the rules relating to the eco-design of products; and
- stipulates that provision of energy services is to be governed by the Energy Services Agreement concluded between energy service companies (ESCO) and the relevant energy user.

## 12 Climate Change

### 12.1 Please briefly explain the nature and extent of any regulatory measures for reducing carbon dioxide emissions (including any mandatory emissions trading scheme).

Serbian national legislation still does not have quantified obligations relating to the decrease of carbon dioxide emissions (mandatory emissions trading scheme). However, in line with the country's overall EU accession process, it is expected that the EU ETS will be implemented in the national legislation by 2016.

The applicable regulatory measures are therefore, by and large, currently limited to setting out the criteria for determining the best available techniques (implying usage of minimum waste), application of prescribed quality standards and other relevant measures aiming to reduce environmental pollution (indirectly resulting in decreased emissions of carbon dioxide).

### 12.2 Are there any national greenhouse gas emissions reduction targets?

Serbia has in principle committed to meet the targets to reduce GHG emissions by 40% compared with 1990 levels, increase its share of renewable energy to 27%, and improve energy efficiency by 27% by 2030. As stated above, these internationally incurred targets are not yet fully transposed into national legislation.

### 12.3 Are there any other regulatory measures (not already mentioned) which aim to improve the sustainability of both newly constructed and existing buildings?

In addition to those mentioned above, there are further sector-specific regulatory measures that may be perceived as aiming to improve the sustainability of buildings and other facilities. These are related to various industry sectors, for example: (i) energy facilities (e.g. grid connection rules); (ii) telecommunication facilities (e.g. rules related to usage of specific infrastructure); and (iii) mining facilities (e.g. rules related to exploration and exploitation of natural resources), etc.



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