

Real Property Investment Law in Montenegro



Gide Loyrette Nouel



Contents

TITLE	3
INTERESTS IN REAL PROPERTY CAPABLE OF REGISTRATION	3
PERMITS RELATING TO CONSTRUCTION.....	4
LEASES	4
COMMERCIAL LEASES	4
TAX.....	6
LEGAL COSTS REGARDING REAL PROPERTY ACQUISITIONS	7
SECURITY USED IN REAL PROPERTY FINANCINGS.....	7



The Declaration of Independence of Montenegro was enacted on 3rd June 2006.

TITLE

Construction land

Construction land in Montenegro can be state owned or privately owned. There are two categories of construction land, namely urban construction land and other construction land. Both categories can be marketed directly.

In Montenegro, property is registered in the cadastre. When real property is state owned, the user of the real property is also registered.

Law on restitution

Montenegro enacted a Restitution Act in 2004, enabling former property owners to seek restitution or reimbursement, if their real property was expropriated by the State without payment of fair compensation. The previous owner has a right to compensation if it is not possible to return the real property.

If restitution is possible, ownership of the real property will be returned to the previous owner. The State of Montenegro is obliged to observe the residential needs of current possessors of such real property, i.e. to ensure they have adequate living accommodation elsewhere before the real property is returned to the previous owner. Restitution has to take place within 10 years of the law entering into force. The Restitution Act 2004 requires that any unutilized construction land held by the State or as social property must be returned to the previous owner.

Fiduciary transfer of property

Under a fiduciary transfer of real property, a debtor transfers the real property in order to underwrite a loan. After the repayment of the debt, the creditor has to return his/her rights over the real property to the debtor. The agreement has to be concluded in a written form and certified by the competent court. The agreement is recorded in the public registry. Rights over the real property are acquired if the real property is registered with a note concerning the fiduciary transfer of the property.

INTERESTS IN REAL PROPERTY CAPABLE OF REGISTRATION

Easements, mortgages, pledges of mortgage backed claims, leases executed for a period longer than five years, pre-emption rights, options, as well as other limitations or interdictions pertaining to disposal or encumbering of real property can be registered. Given the wide wording of the Montenegrin law it is difficult to provide an exhaustive list of these interests. The purchaser acting in good faith cannot claim that he was unaware of any interest which was previously registered. Therefore, the purchaser shall be required to respect the registered interest.

A purchaser acting in good faith shall be affected by the interest in real property entitling its holder to possession over the real property. Therefore, the purchaser shall be required to respect the registered interest. However, the purchaser shall only be entitled to damages against the seller under the real property sale and purchase agreement.

There are some customary interests in favour of the State or neighbouring properties which are not capable of registration. Montenegrin law is, however, vague in this respect. As a result, it is difficult to provide a list or to assess the way these interests affect a purchaser acting in good faith.



PERMITS RELATING TO CONSTRUCTION

Re-zoning of agricultural land to construction land

Agricultural land can be re-zoned to construction land to the extent stated in relevant local plan.¹ This re-zoning can be temporary or permanent. The consideration for temporary re-zoning equals the average cadastral income for exploitation of that agricultural land. As for permanent re-zoning, the consideration amounts 100 times the average cadastral income for exploitation of agricultural land. This consideration is not asked in case when re-zoning is performed for the construction of certain types of structures such as roads used for agricultural purposes and the factories producing agricultural products etc.

Building construction permit

Building permits are issued by the relevant municipality authorities in accordance with Article 32 of the Construction Act 2000. The investor must submit in writing the relevant documents, such as the plan of the building and the title demonstrating the property right over the land (i.e. the excerpt from the Land Registry). Where buildings are of a particular interest for the country (e.g. roads, airports etc), the permit is delivered by the Ministry in charge of construction. The building permit remains valid during the time period indicated therein (between 6 months and 1 year).

Under Montenegrin law, the land zoning and the issuing of building permits must comply with local plans which ought to comply with the Master Plan Act 2005.²

Permit to use the construction

Provided that the building conforms to the initial building permit, a use permit may be issued for the building by the same authorities that issued the building permit. The conformity of the building to the main plan is inspected by the relevant authorities, but the law does not provide a time limit for the performance of such inspection. The use permit is issued or denied within 8 days of the end of the inspection of the building.

LEASES

The agreement regarding the lease of apartments must be in written form and certified by the competent entity. The landlord can terminate the lease prior to its term if the tenant has not paid the rent for two successive months or if the tenant sublets the apartment without the permission of the landlord. The contract can be concluded for a definite or an indefinite period of time. A notice period of three months applies by default if it is not otherwise specified in the contract.

COMMERCIAL LEASES

No specific statute

Save for specific provisions pertaining to the lease of apartments there are no specific regulations applicable to commercial leases. Commercial leases are governed by the general rules of the Montenegrin Code of Obligations.

¹ Article 22 of the Agricultural Land Act 1992.

² Article 6 of the Master Plan Act 2005.



Form

A lease agreement must be concluded in writing, make reference to the real property which is the object of the lease and state the amount of rent. If these requirements are not satisfied, the lease is considered null and void.

Duration

A lease agreement may be concluded for a definite or an indefinite period of time. No minimum or maximum duration is fixed by law. Lease agreements concluded for more than 10 years can be registered in the cadastre as an encumbrance.

Termination

Lease agreements concluded for an indefinite period of time may be terminated with eight days notice by either party.

Lease agreements that are concluded for a definite period of time, end after their expiration date. If the tenant continues to use the premises and the landlord agrees, it is assumed that a new lease agreement is concluded for an indefinite time period on the same terms as the previous lease agreement.

The landlord may terminate the lease agreement without notice if the tenant fails to comply with the designated use of the property or does not maintain the premises to an adequate standard. The law further provides that the landlord may terminate the lease agreement if the tenant does not pay his/her rent within two weeks of the receipt of a notification from the landlord.

No right of renewal

The tenant has no statutory right to renew his/her lease. A lease is renewed automatically only if the tenant continues to use the premises and the landlord agrees. In that case it is assumed that the new agreement is concluded for indefinite period of time on the same terms as the previous lease agreement.

No pre-emption right of the tenant

The tenant has no statutory pre-emption rights.

Rent and rent cap

The amount of the rent is freely determined by the parties. Rent must be quoted in either EUR or in another currency, otherwise the calculation used must be stated. If this requirement is not satisfied, the lease agreement is rendered null and void.

If it is not determined otherwise, rent is payable twice a year for leases that last one or more years. If the lease period is shorter than one year, the rent is payable at the expiration of the lease period.

Rent review

The law does not provide for any rent indexation provisions. Therefore, rent is adjusted in accordance with contractual provisions.

All costs are recoverable from the tenant

All costs may be recoverable from the tenant.



Use

The tenant shall use the premises according to their designated purpose and in accordance with the lease agreement. The tenant is responsible for any damage caused by the use of the premises (except for damage caused by normal wear and tear), regardless of whether the premises are used by the tenant, the subtenant, or by another person authorised by the tenant.

Maintenance

Unless otherwise specified in the lease agreement, the tenant is responsible for minor repairs and maintenance work required for the day-to-day use of the premises.

The landlord shall carry out all the necessary repairs in order to allow the tenant to use the premises in accordance with their designated purpose. The landlord must ensure the maintenance of the building and of all essential equipment (heating, electricity, gas and water supplies, elevators, etc.).

Improvements

After termination of the lease agreement, the tenant must leave the premises in their original condition, unless the contract provides otherwise.

If a tenant has carried out improvements, the landlord is entitled at the end of the lease, to either keep the improvements (in exchange for a payment equal to their value at the time the premises revert to the landlord), or to require the tenant, at his/her expense, to restore the premises to their original condition.

Transfer of lease by the tenant

Unless otherwise specified in the lease agreement, transfer without the prior consent of the landlord is not permitted.

Sublease

The law provides that the tenant can sublet the premises without the prior consent of the landlord if the lease agreement does not provide otherwise. If the landlord's consent is required by the lease agreement, the law provides that this consent cannot be unreasonably withheld. In any case, the tenant guarantees the landlord that the subtenant will comply in full with the provisions of the lease agreement and will respect the designated use of the premises.

TAX

Transfer tax

A tax rate regarding transfer of real property is 2% of the market value of the property and is to be paid by the purchaser.³

VAT

VAT is only payable on the first transfer of title of newly-constructed buildings or economically divisible units within the framework of such structures. The current VAT rate is 17%.⁴

The transfer of land (both developed or undeveloped agricultural and construction land), is not considered as a transfer of goods and so VAT is not due.

³ Tax on Transfer of Immovable Property Act 2003 (Official Herald of RCG 69/03).

⁴ Value Added Tax Act 2001 (as amended) (Official Herald of RCG 65/01, 12/02, 38/02, 72/02, 21/03 and 76/05).



Leases of agricultural land and forests that are registered in land registries are exempt from VAT. Leases of apartments, houses and buildings that are used for residential purposes and are leased for more than 60 days are also exempt from VAT.

VAT does apply to commercial leases. The current rate is 17%.

Capital gains for legal entities

The rate of tax is 9%.⁵

Real property tax

The rate of real property tax ranges from 0.08% to 0.8% of the market value of the real property. A tax statement must be filed by 31st May at the latest. The tax is usually payable in two equal instalments.

LEGAL COSTS REGARDING REAL PROPERTY ACQUISITIONS

Certification fees

Certification fees are 0.25% of price mentioned in the sale and purchase contract but cannot exceed EUR 300.

SECURITY USED IN REAL PROPERTY FINANCINGS

Mortgages

Mortgages are created on the basis of an agreement, judicial decision or by operation of law. The mortgage creditor has no right to use or dispose of the real property during the period of validity of the mortgage. The mortgage has to be registered in the cadastre of immovable property and is published on the website of that Agency. The agreement has to be concluded in written form and certified by the competent entity. The mortgage terminates automatically when the debtor fulfils his/her obligations.



⁵ Tax on capital gains for legal persons Act 2001 (as amended) (Official Herald of RCG 65/01, 12/02 and 80/04).



About the Law Firm

Gide Loyrette Nouel is an international law firm that has been advising real estate investors since 1920. Gide Loyrette Nouel has been present in Central and Eastern Europe since 1991.

About the Authors

François d’Ornano is the Partner in charge of the Belgrade office of Gide Loyrette Nouel and a member of the International Real Estate Practice Group. He gives lectures at the University of Belgrade, School of Law. He was admitted to the Paris Bar in 1998. He has a Master’s degree in international private law, University Paris II Panthéon-Assas (1998) and a degree in business law, University Paris II Panthéon-Assas (1997).

Borislav Vićentić is a senior associate at our Belgrade office. Borislav joined the office in 2005, after three years spent at Prica & Spasić. His important experience and unmatched dedication to finding the perfectly tailored solution for each specific case has won him a position of a well respected practitioner in this field. Besides real estate, Borislav is highly experienced in corporate and commercial law, M&As and privatisations. Mr Vićentić is also a member of the international real estate practice group of Gide Loyrette Nouel.

Gide Loyrette Nouel

Andrićev venac 2, 3rd Floor

11000 Belgrade

Serbia

Tel. +381 (0)11 30 24 900

Fax +381 (0)11 30 24 910

E-mail: gln.belgrade@gide.com

www.gide.com

Contacts

François d'Ornano

E-mail: ornano@gide.com

Borislav Vićentić

E-mail: vicentic@gide.com



Gide Loyrette Nouel