

The New Face of Legalisation in Serbia



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The new Legalisation Act, which entered into force on 1 November 2013, allows for legalisation of facilities constructed without a construction permit or used without a usage permit, provided certain legal and technical requirements have been met.

Current status of unlawfully constructed facilities

Under the current Construction and Planning Act (PCA), as in other countries in the region, structures or facilities constructed without the relevant construction or used without the relevant usage permit are deemed illegal. As a general rule, the PCA prescribes that construction of facilities is subject to issuance of construction permits, while use of facilities is subject to issuance of a usage permit.

Unlawful construction works may be halted pursuant to a decision by the construction inspector and then demolished (if a construction permit was not obtained in the prescribed term). Where works are not carried out in line with the construction permit, a construction inspector may order that such works be halted and amendments made to the construction permit. Where a facility has been developed without a construction permit, a construction inspector may: (i) impose fines ranging from ca. EUR 13,000 to EUR 26,000 (repeated unless the matter is remedied); (ii) prohibit the carrying out of works/use of facility; and (iii) order removal of the facility. The operational permit is a precondition for use of the developed facility, and it may not be lawfully used prior to a technical inspection and an operational permit subsequently issued. So the investor may be deprived of the right to use the constructed facility.

Where documents necessary for obtaining an operational permit have been duly submitted and the process is pending, the risk of adverse consequences is significantly reduced than in cases where the operational permit has not been obtained because construction has not been carried out in accordance with the construction permit.

The foregoing consequences may be mitigated through the legalisation procedure under the new Legalisation Act, provided that illegally constructed facilities meet the requirements set forth under the new law.

New Legalisation Act requirements

The new Legalisation Act, which entered into force on 1 November 2013, sets out that facilities constructed without a construction permit or used without a usage permit may be legalised, i.e. that a construction and/or usage permit for such facilities may be subsequently obtained.

The prospective legalisation act allows for the legalisation of illegal facilities that meet certain legal and planning/technical requirements. Namely, pursuant to the draft Legalisation Act, an application for legalisation must be accompanied by relevant documents, such as:

- (i) a geodetic survey;
- (ii) an as-built design;
- (iii) evidence of proper title to the land; and

(iv) evidence of settlement of the land development fee.

It is also interesting to note that illegal facilities may be connected temporarily to all infrastructure utilities (gas, electricity mains, etc.) until the authority competent for issuance of construction and usage permits finally decides on the request for legalisation of such facilities.

Requests for legalisation must be filed within 90 days from the date of entry into force of the Legalisation Act, whereas all pending requests filed under former laws governing the legalisation are considered filings under the Legalisation Act.

The new Legalisation Act sets out that facilities constructed without a construction permit or used without a usage permit may be legalised, meaning that construction and/or usage permit for such facilities may be subsequently obtained.