



USAID
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Projekat za bolje uslove poslovanja
Business Enabling Project

**USAID Business Enabling Project in Serbia
Scope of Work for Consultant
for Review of Land Usage Right Conversion and Legalization Process in Serbia**

I. BASIC INFORMATION

Background

USAID's Business Enabling Project, implemented by Cardno Emerging Markets USA, is a five year initiative launched in January 2011. The purpose of the Project is to help the Government of Serbia improve the competitiveness of the Serbian economy and its private sector businesses. The Project will provide technical assistance, training, and other support to improve the business enabling environment, maintain macroeconomic stability, and further develop financial markets. The Project is demand driven: all activities are based on the priorities of the private sector and Government. The Project's activities are described in more detail on the Project's website: www.bep.rs.

The Business Enabling Project's Component 1, Business Regulation and Economic Governance, has a goal to streamline laws, regulations, and institutions, to improve regulators' capacity to implement laws and improve analysis and public-private dialogue.

The project's approach to achieving reforms is to help the Government work closely with the private sector and outside experts to make reforms that improve business competitiveness. The steps in this collaborative reform process include:

- Determine priorities by engaging with businesses, including surveys of businesses, and using regulatory impact assessment and other tools to measure the benefits of reforms
- Build demand for reforms through outreach and education
- Partner with the Government to plan and implement various priority reforms
- Build Government and private sector capacity to properly implement and sustain reforms
- Help the Government and private sector to monitor reform efforts.

These activities will reduce the time and money spent by Serbian businesses to comply with laws and regulations and will help the Government to be more efficient. The activities will also enable businesses to attract necessary investment at an appropriate cost. As result, Serbian businesses will be able to aggressively compete in the global economy. This will lead to export-led economic growth and increased employment.

Conversion and Legalization Issues

Construction permitting, realty rights and the construction industry in Serbia are encumbered with a number of unresolved issues and on-going processes, including conversion of usage rights on construction land into ownership rights, and legalization of illegally constructed facilities. There are many other issues, such as: property restitution and compensation, registration of construction land and related legal rights, formation of building parcels, conversion from agricultural to building land, obtaining of technical requirements for the design of access to infrastructure, removing of the existing buildings on the land and gaining location permits.

The right of use of construction land in Serbia was based on the concept that the state is the owner of construction land, while the other legal entities and natural persons can only hold the right to use such land. The new Law on Planning and Construction, enacted and entered into force in 2009, provides for conversion of a right of construction land use into a right of construction land ownership (freehold) rights, in order to remove the right of use over construction land from Serbian legal system. Under the Law on Planning and Construction, a construction permit may not be issued on the basis of the right of use, but only on the basis of ownership or lease rights. Therefore, the conversion procedure has to be conducted prior to filing a request for a construction permit.

There are two sorts of conversion of a right of use into an ownership right: with and without payment of a fee by the prospective owner of the construction land. The companies that acquired land in the past through privatization, bankruptcy or enforcement procedure, or based on legislation in the area of construction land in effect prior to 13 May 2003, should be able to convert usage rights into ownership rights by paying a fee equivalent to the difference between the market value of construction land at the time of conversion and the costs of acquiring land rights. Conversion of usage rights in other circumstances is without fee. Amount of the conversion fee produced a number of controversies and debates.

However, the legal solutions in respect to the conversion for fee did not produce desired results in practice. Thus, amendments to the Law on Spatial Planning and Construction were adopted in 2011, aiming to fill the gaps, among other things, related to the conversion of usage rights into ownership rights, and acceleration of this process.

On the basis of the Law on Planning and Construction, including amendments from 2011, the Government of the Republic of Serbia adopted the Decree on Requirements, Criteria and Manner of Realization of Right to Conversion of Usage Right into Ownership Right for Compensation, and on Manner of Determination of Market Value of Construction Land and Amount of Compensation on the Basis of Conversion of Usage Right into Ownership Right for Compensation, which cancelled the previous Decree on Manner and Procedure of Realization of Right of Conversion of Usage Right over Construction Land into Ownership Right 2010, and the Decree on Criteria and Procedure for Determination of Amount of Compensation on the Basis of Conversion of Right for Persons Entitled to Conversion for a Compensation 2010.

Nevertheless, the latest legal modifications and enactments have not achieved the intended results. Businesses and experts point out several reasons for lack of results, including absence of precise instructions in the provisions pertaining to conversion process, and poor implementation in practice. The land registries avoid positively resolving cases where conversion is requested, and even in the event of a positive resolution, attorneys general appeal such resolutions. In many cases, appeals by attorneys general lack proper argumentation and hence only prolong the conversion process. Furthermore, business and expert communities adduce that after the appellate procedure is completed, attorneys general tend to challenge the conversion resolutions before the Administrative Court, which then deliberates the case for an unreasonably long period of time, and in a number of cases returns the case to the commencement, with argumentation which does not always demonstrate the expected the high competence of the judiciary. The aforementioned suggests that the state authorities are not prepared to recognize the right of ownership of construction land, consequently avoiding giving up those ownership rights currently inscribed in favor of the Republic of Serbia. Besides, the manner of valuing the market

value of construction land at the time of conversion and the costs of acquiring land rights was challenged in a number of cases.

Procedure for issuing construction permits in Serbia is still excessively time-consuming, and Serbia is still ranked among the most inefficient economies in construction permitting. According to the World Bank's Doing Business 2013 report, dealing with building permits in Serbia takes 269 days and involves 18 procedures, and Serbia is ranked at 179th place out of 185 economies on the ease of dealing with construction permits. USAID BEP Business Survey 2012 similarly found that, despite certain improvements, 92 percent of respondents who require construction permits found obtaining one highly problematic and riddled with difficulties. First step in dealing with construction permits is requesting and obtaining proof of ownership of the construction land, which cannot be undertaken if applicant holds usage right until completing complex and time consuming conversion process. Likewise, USAID BEP's Study "Assessment on Constraints to Construction Permitting in Serbia" showed many deficiencies regarding construction permitting, including the conversion process. The fact remains that many of most attractive potential construction sites require completion of conversion process to be developed.

The Law on Spatial Planning and Construction introduced legalization of illegally constructed facilities, meaning the later date issue of construction and usage licenses for a facility, or parts of a facility, which is constructed, or reconstructed without the construction permit. The Law prescribed substantial relationships and procedural issues with regard to the legalization, and the local authorities adopted respective legal acts, including financial schemes regarding payment of legalization fee (for example, monthly installments). However, the legalization process did not achieve its full results, and amounts of legalization fees raised controversies and issues. The amendments to the Law on Spatial Planning and Construction 2011 introduced the substantial reduction of development fee for the legalization, and the rules on the technical requirements for legalization have been relaxed. Due to lack of bigger volume of legalization, and, therefore, lack of more constructed facilities eligible for registration in the Real Estate Cadaster, Minister of Construction and Urban Planning announced that cadastral legalization of facilities would begin in 2013, adding that total cost per facility would total up to small amount.

However, in December 2012, the Constitutional Court has declared the provisions governing legalization in the Law on Spatial Planning and Construction to be unconstitutional, founding that legalization *per se* is not unconstitutional, but is the way it is regulated by the Law. The Constitutional Court postponed publishing this Resolution in the "Official Gazette" and thus left to the Law-makers period of six months to correct the unconstitutional provisions and comply with the Constitution. During this time, all owners of illegal buildings may continue to conduct legalization under the proclaimed unconstitutional provisions.

The Ministry Construction and Urban Planning developed the Draft Law on Special Conditions for Registration of Property Right over Buildings Constructed without Construction Permit, which passed the process of public consultations. The Standing Conference of Towns and Municipalities (SCTM) provided comments and proposals to the Draft Law. Among other things, SCTM seek for payment of land development charge for those buildings, and proposes comprehensive approach: modifications of the Law on Spatial Planning and Construction, The Law on State Survey and Cadaster, The Law on Property Tax, and other legislation. The Ministry responded that some proposals of the SCTM will be accepted, but not the land development charge proposal.

Thus, the legal regime in the area of legalization does not provide legal security, and raises a number of issues which seek for resolution.

In order to understand the situation and options concerning the issues of legalization and conversion, USAID BEP plans to engage a local consultant (hereinafter: Consultant) to identify the current state of affairs and issues concerning conversion and legalization processes in Serbia and potential solutions in this area. This consultancy and the work product thereof may be only used internally by USAID. USAID BEP might decide not to publically release the work product and make all deliverables of this SoW and/or parts thereof confidential.

Scope of Work

This assignment will be part of the BEP project's Component 1: Business Regulation and Economic Governance activities, and is incorporated in BEP's Objective 1: Improve and streamline business regulation – Task 4: Streamline Construction Permitting.

Tasks

1. Conduct a review of current state of affairs and issues concerning conversion and legalization processes in Serbia and write a report on it, including:
 - Prepare a comparative note – experiences with legalization and privatization of socially/State owned construction land in countries of former Yugoslavia.
 - Prepare an overview of legalization and conversion legislative, regulatory and implementation activities within last 10 years (and particularly on most recently adopted legislation on both issues), with the focus on what has driven them (socially, economically and politically), models that were discussed at different points, reasons for opting for the models that were adopted and their outcomes;
 - Map various groups' interests concerned with conversion and legalization;
 - Prepare an overview of results of undertaken activities on conversion and legalization, with indication on number of properties that were part of these processes;
 - Assess the current status of conversion and legalization, with the focus on the volume of properties concerned and on the status of administrative and court proceedings where applicable;
 - Assess pending/unresolved conversion and legalization cases, with indication of the economic impact of those properties not having clear legal title.
 - Prepare an analysis of currently discussed/proposed models for conversion and legalization and assessment of their impact if approved by the Government;
 - Provide recommendations in the areas of conversion and legalization processes aimed to indicate possible resolutions of unresolved issues, in order to improve legal security and economic efficiency in these areas.
2. Presentation of the findings and recommendations to USAID BEP staff, USAID and other stakeholders, as requested by USAID BEP, within period of 90 days following conclusion of the consultancy agreement.

Level of Effort

Consultant will have up to 15 (fifteen) days of engagement for completion of the tasks.

Period of Performance

Period of performance of this SoW is from January 18, 2012 to February 8, 2013. Maximum number of days under this SoW cannot exceed 15 (fifteen) days.

Deliverables

Specific work products to be developed by Consultant include:

- 1) Written report as described under Tasks section of this Scope of Work, to be completed within 20 calendar days following conclusion of the consultancy agreement.
- 2) Presentation of the findings and recommendations to USAID BEP staff and other stakeholders, as needed, within period of 90 days following conclusion of the consultancy agreement.

The report should be made in a word document that will be 15-20 pages long, without possible annexes (tables, quotations of law articles etc).

Consultant will furnish draft of this report to the USAID BEP not later than 7 (seven) days before expiry of the deadline for submission of the final report. USAID BEP will provide its comments in written not later than 3 (three) days after receiving the draft report and Consultant will submit the final report, taking into considerations comments received, within next 4 (four) days.

All materials must be prepared in English unless expressly authorized otherwise in writing by the Cardno Emerging Markets representative.

To Apply

1. Requirements for eligible candidates:
 - a. Proven expertise and significant experience in the field of real estate, construction permits, conversion of usage rights on construction land into ownership right, legalization of illegally constructed facilities and similar.
 - b. Good writing and presentational skills.
2. Applications including CV clearly showing adequate technical background and relevant work experience should be sent by e-mail to: info@bep.rs, **by January 16, 2013**. Only short-listed candidates will be contacted.
4. Maximum number of this under this Scope of Work cannot exceed 15 (fifteen) days.