



POSITION DOCUMENT

AMERICAN CHAMBER OF COMMERCE IN MONTENEGRO

REAL ESTATE COMMITTEE

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EXECUTIVE SUMMARY

This position document was produced by Real Estate Committee of the American Chamber of Commerce (AmCham Montenegro) and is focused on raising awareness about business challenges in the real estate and construction sectors. The members of this Committee are currently some of the most prominent investors in real estate in Montenegro and this document is the result of their practical experiences with respect to doing business in the area of real estate.

A large portion of foreign direct investments in Montenegro during the past decade have been and continue to be related to real estate development and construction. Members of the AmCham Real Estate Committee have recommendations, represented in this document, for improving real estate investments of all types. Many significant business barriers still exist in construction and real estate sectors.

The purpose of this document is to identify those barriers and indicate the potential for improving the regulatory framework and practice in the area of real estate in Montenegro.

Members of AmCham's Real Estate Committee agree that the main issues that should be addressed and improved are as follows:

- The quality of and the time frame for producing planning documents
- Lengthy building permit process
- Utility connections and availability of utility maps and data
- Lengthy approval procedure for Environmental Impact Assessments
- Efficiency of the Real Estate Administration
- Resolve property restitution cases more efficiently
- Improving cooperation and communication between state authorities and municipalities, both horizontally and vertically
- Efficiency of services and professionalism of administration on a local and central level
- Real estate tax framework

This document elaborates on the above-mentioned issues in greater detail and provides recommendations that AmCham considers crucial for improving the overall situation in the real estate sector in Montenegro.

Dedicated to improving the business environment in Montenegro,

AmCham Montenegro
Real Estate Committee

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1. QUALITY AND DEADLINES FOR PRODUCING PLANNING DOCUMENTS

The issue of the quality and the lengthy time frame for producing planning documents needs to be improved in order to ease the execution of real estate projects in Montenegro.

When producing planning documentation, the accountability of individuals who prepare and administer the documentation is not legally determined. Likewise, there is no accountability of individuals who produce this documentation. There is no legally provisioned accountability for the quality of planning documents if the documents do not contain all necessary data, if they cannot be applied or if planning parameters and urban settings happen to be contradictory. The practical experience of members has shown that produced planning parameters and urban settings can often be contradictory and that civil employees within the ministries and local self-governments can often be in conflict and unable to reach a consensus on those issues.

Furthermore, the quality of traffic solutions is often found to be inadequate. The investor is obligated to pay for producing new traffic studies, which must be approved by local or state authorities.

The accountability for unjustified delays with producing planning documentation is not defined according to law. Members often experience delays with obtaining planning documentation without any consequences for the state administration officials that work on executing the planning documentation. The reasons for delays are often described as: outdated geodetic and cadastral maps, absent cadastral installations, absence of studies necessary for work, etc.

Recommendation:

AmCham Real Estate Committee recommends the legal adoption of duty to meet deadlines for producing planning documentation both on the national and municipal level. The Committee also recommends the introduction of legally binding accountability of individuals who prepare and administer documentation for producing document of insufficient quality.

The current Law on Construction and Spatial Planning stipulates the Economic and Market Outlook as a mandatory part of planning documentation, but it does not define the drafting process of this important planning segment.

Recommendation:

AmCham recommends that the feasibility principle is introduced as one of the most adequate criteria when drafting planning documentation. In this manner, the Economic and Market Outlook will be legally defined, hence the market principle in drafting the planning documentation introduced. Therefore, all approved planning documents would consist of projects which are feasible and competitive on domestic and international market of investment projects, i.e. investment capital.

2. LENGTHY BUILDING PERMIT PROCEDURE

The fact that the Law on Construction and Spatial Planning provisions the deadline for issuing construction permits from 30 to 60 days from the date of application should be commended. However, the procedure preceding this process can last 2 to 3 years. The procedures explained in the Law are simple and clear, but are broadly defined. In order to start the permit procedure there are many required steps to be followed which are not evident at the beginning of the process. Such steps can be commission reviews, additional approvals, land purchase negotiations according to the subdivision in the Detailed Urban Plan (DUP), the use of rights over the land, etc.

Article 62a of the Law on Construction and Spatial Planning provisions that local authorities obtain from the body authorized for cadaster all property papers and copies of cadaster lot plans of all lots constituting the Urban Lot (UL) which is the subject of the request. Also, Article 57 stipulates: "The self-government body authorized for cadaster must include the new subdivision plan determined by planning documents in cadaster plans no later than 30 days after obtained." Unfortunately, in practice this Article is not applied, creating many key problems when issuing Urban and Technical Conditions (UTC) and construction permits.

In practice, UTCs are issued based on the approved planning document, which is not issued by the authorized body, property papers or copies of cadaster lot plans of that planning document. Also, cadaster lots constituting that lots are referred as parts of the lot and not as a single lot. When UTCs are issued in this manner, the investor is required to complete the urban lot by hiring a licensed Surveying and Mapping Service, as well as to complete the subdivision plan with the authorized cadaster. The time required for completing this procedure is often measured in months, or even years. Some cadasters do not allow subdivision, according to the DUP, without approval of the owners of all cadaster lots which constitute the urban lot. This is not in accordance with the Law.

The State Real Estate Agency unlawfully avoids using the shorter procedure for subdivision. Instead, it conducts the special inquiry procedure and prolongs the subdivision procedure, which is not legally and fundamentally questionable. Also, the procedures for subdivision according to DUP are not uniform in every municipality. They differ in the amount of work needed for the procedure and in the manner in which the procedure itself is conducted.

According to Article 93, Paragraph 1, Item 2, the construction permit is, *inter alia*, issued based on: "the proof of ownership or other right on that construction property". The local authority is mandated to obtain this proof. However, having in mind that the investor produced and implemented the subdivision plan, the local authorities that issue construction permits do not have access to the implemented subdivision plan nor do they possess information that the cadaster lots have new numbers and constitute new surfaces. This results in inconsistencies and confusion between the authority that issues the construction permit and the authority in charge of cadaster that issues property papers and copies

of cadaster lot plans. In this manner, the authority cannot determine the ownership of the investor and cannot issue the construction permit.

Recommendation:

We recommend that the procedure preceding the process of issuing construction permits should be precisely legally defined. Likewise, Articles 62a and 57 of the Law on Construction and Spatial Planning should be fully implemented. The process of urban lot subdivision and completion should be carried out in accordance with the Law and aligned on local level. Also, the investor should be enabled to track the processing of his case and to react to authority's remarks in a timely manner.

After the procedure of subdivision according to DUP is finished, the problem of completing the lot emerges. Article 59 stipulates that the owner of the cadaster lot must bear the changes of urban lot boundaries, according to the subdivision plan. This Article is not sufficiently elaborated and does not resolve the problem of completing the urban lot. According to the current legislation, the urban lot consists of one or more cadaster lots after the subdivision plan is completed. If every cadaster lot is owned by a single person, there is no problem with completing the urban lot or initiating the construction work. But, if cadaster lots or parts of cadaster lots are owned by various individuals, a problem of completing the urban lot emerges if only one of the owners (even if he/she owns 1% of the lot) refuses to sell the property and enable construction. The negotiations on completing or buying the cadaster lot or providing consent for construction on the urban lot can last for up to several years. This is a serious business barrier, which disables development and the use of the property for any purpose.

Recommendation:

- a) *Introduce the procedure of urban land consolidation. Urban land consolidation implies using arbitration for completing the urban lot. Smaller parts of the property are therefore transferred to the majority owner. Another solution may be that the property is transferred to the owner who showed the initiative to build on that property and owns a legally defined minimum of one of the cadaster lots. In both cases the land would be sold according to current market prices.*
- b) *If the majority and minority owner cannot agree on dividing their properties, the local authorities should make a decision of exempting the owner who does not plan to build or invest on that lot. The procedure for acquiring the ownership or some other right over the lot has to be completed prior to obtaining the use permit. The sufficient condition for obtaining the construction permit should be the initiation of this procedure by the majority owner.*
- c) *Legally define the urban lot as consisting of only one cadaster lot. Our proposal of this definition is the following:*

“The urban lot is the cadaster lot which is formed based on the subdivision plan and conditions and guidelines determined by the planning document and which meets all construction criteria provisioned by the planning document. The urban lot should have access to urban or public roads. The copy of the subdivision plan contains the graphical overview of the urban lot.”

This recommendation implies that (in accordance with the criteria and guidelines set by the planning document) the urban lot is formed while conducting the subdivision plan in such manner that it comprises of all cadaster lots and/or parts of cadaster lots which constitute that urban lot. In this

case, the owners of cadaster lots and/or parts of cadaster lots would be considered co-owners in one single lot. Their ownership percent would be equal to the size of their cadaster lot which is the part of the new lot. In this manner, the problem of ownership rights in urban area would be solved under lawful and just terms having in mind that owners would not lose their ownership rights since they would be transformed in co-ownership. The co-owner has the same level of ownership rights and adequate legal procedures and remedies for protecting his/her rights at his disposal.

Article 93 defines the documentation necessary for obtaining the construction permit and stipulates that the following documents must be provided: “proof of ownership, or other right over the property or proof of right to construction, or other right over the property if reconstruction of the property is undertaken”. In practice, the investor often obtains the right to use a property with the intention of starting the construction. Hence, the condition for obtaining ownership is the building process itself. In this case, the basis for construction is not the investor’s ownership right, but the right to build.

Recommendation:

The term “other right over the property” is too broad and should be defined more precisely. Accordingly, the issuing of construction permit should be based on “the right to build on the construction site”.

3. UTILITY CONNECTIONS AND AVAILABILITY OF UTILITY MAPS AND DATA

Firstly, we would like to stress that exorbitant utility connection fees are not the focus of this position document. As AmCham has stated in previous correspondences, the amount and justification of communal/utility connection fees remain a significant investment barrier. Members of the Real Estate Committee commend the Government’s efforts to resolve this matter, such as developing a list of buildings of public interest, which are legally exempt from paying communal fees.

In this document we discuss the lack of available data on communal infrastructure. In the phase of preparing land for development the problem of clearing the site properly emerges. There is essentially no cadaster of underground installations, i.e. the situation on the ground does not reflect the one stated in cadasters of underground installations. The investor often does not know what lies beneath the ground of the construction site when clearing property or preparing a given site for development. This issue is related to the point of poor quality of planning documentation and the issue of publicly available offprints, which has never come to existence. The investor is obliged to submit a study on geodetic record of infrastructure objects footprint after completing each development project.

Recommendation:

The existing legal framework should be fully implemented and enforced by authorized institutions. In this manner, the changes in the field, i.e. the cadaster of underground installations would be fully updated. This would significantly ease future communal site development and construction.

4. ENVIRONMENTAL IMPACT ASSESSMENT PROCEDURE

The procedure for obtaining permission to move forward with development plans following an environmental impact assessment of a project is too lengthy. The essence of the problem is the amount of activities that need to be conducted in order to complete this procedure can often last up to 6 months.

Recommendation:

Legally define the deadline for conducting this procedure to 50 days maximum. This deadline would make it more likely that the timeline for obtaining construction permits within 30-60 days can be reached.

5. QUALITY OF WORK OF THE REAL ESTATE AGENCY

The work of the Real Estate Agency needs to be improved. The quality and content of decisions and procedures currently undertaken is questionable. It often occurs that individuals hired to handle technical issues assess the legal basis of a project. Likewise, the Agency's archive is not adequately organized and often the investor must re-submit the documentation which was already submitted to the archive of the Agency.

Additionally, the lack of accurate and updated information related to cadaster is also a problem. Owners and potential buyers do not have access to important information regarding the current ownership status or ownership history. The Law provisions that the cadaster statement should be a public document which provides an overview of facts that can affect the ownership of an individual or a legal entity. However, this document does not contain all necessary data, such as data on possible requests for change of ownership which are not yet administered, etc.

Recommendation:

AmCham Real Estate Committee recommends improving the work of the Real Estate Agency in order to enhance the possibilities for investment and development projects in this area. The archive should be reorganized and made easily accessible to Agency's employees. Likewise, the Law must be fully implemented when it comes to the content of property cadaster. If necessary, Agency's employees should undertake trainings which would enable them to obtain skills necessary for working with international investors.

The legally defined deadline for submitting the request for property registration is needlessly long (according to Article 118a the procedure can last up to a year after concluding the purchase agreement). The aforementioned Article is not in accordance with tax regulations that oblige the new owner of the property to submit a tax registration form and pay the real estate transfer tax no later than 30 days after signing the purchase agreement. Therefore, the property is purchased but not registered and the individual who is the previous owner at that point pays the taxes for the property.

Recommendation:

The deadline for submitting the request for property registration should be limited to 15 days maximum.

6. THE ISSUE OF PROPERTY RESTITUTION

Large investments currently undertaken in Montenegro and those potentially realized are the opportunity for public administration to ease the implementation of these projects to investors. When analyzing these projects, one must bear in mind their effect on the economic development and improvement of living standards of Montenegrin citizens. Directly, these projects provide a number of job opportunities for people of various skills and educational backgrounds. Likewise, they can put Montenegro on a short list of the world's most attractive destinations for vacation, recreation and business. Indirectly, these investments enable the development of small and medium enterprises, which would administer the project or as an independent initiative grown from the necessity of the project. Therefore, the only conclusion made is that these projects are indeed in the public interest of Montenegro.

However, it sometimes occurs that these projects cannot be completed in time due to difficulties with reaching an agreement with owners of lots forming a part of the investment. Owner's requests are often not in accordance with market prices. These kinds of disputes cause huge loss for the investor in terms of time and money and significantly influence their decision on further investing on the Montenegrin market. These unsettled ownership issues are also a significant criteria for new investors who consider starting their business in Montenegro.

Recommendation:

The aforementioned projects should fall under the scope of Article 52 of the Law on Construction and Spatial Planning which provisions: "The public interest for expropriation of property intended for construction and spatial planning is determined by issuing the planning document." This means that these projects should be considered public interest and fall under the scope of the Law on Expropriation. The Government of Montenegro should define the set of criteria for determining the public interest (the legal basis for this proposal lies in Article 14 of the Law on Expropriation). The criteria for defining the public interest should include the size of the investment set in euros, the purpose of the investment and the influence it will have on the socio-economic development and employment policy in Montenegro. In this manner, the Government would proclaim a multi-million euro investment as the public interest of the country, what it actually is. The property dispute would be settled in accordance with international valuation standards. Furthermore, the investments that would employ a significant number of people and position Montenegro as a safe investment destination would be realized.

The proving documentation needed for initiating the restitution process and issuing the restitution and compensation request is defined vaguely. It often occurs that the restitution is approved regardless the fact that the restitution request contains invalid proves.

Recommendation:

We recommend that the proving documentation necessary for issuing the restitution request should be defined in detail. Furthermore, a minimum set of criteria for determining whether the request is founded and initiating the process of restitution with the cadaster should be defined.

7. COOPERATION AND COMMUNICATION BETWEEN STATE AUTHORITIES AND MUNICIPALITIES

The cooperation and communication between state authorities, local self-governments and their internal bodies is not satisfactory. The information is not updated and easily accessible. The exchange of documentation between two bodies lasts for days, weeks or even months, hence affecting the legally defined deadline for obtaining these documents. Sometimes, the investor requires certain written clarifications from authorities and receives no answer to his request. Even when they receive the answer, it is often imprecise and delivered untimely. It can also occur that the investor receives the information that his question will not be answered in written. This issue may seem irrelevant, but it is important since it is widespread and it seriously affects the business in Montenegro.

Recommendation:

Our recommendation is to establish a prompt, professional and efficient investor-authority communication. Likewise, the cooperation between authorities on local and central level should be improved in every phase, starting with issuing of planning documents to issuing urban and technical conditions, construction permit and the use permit.

8. THE SPEED OF SERVICE DELIVERY AND PROFESSIONALISM OF THE ADMINISTRATION ON LOCAL AND CENTRAL LEVEL

State and local authorities do not dully provide services and infrastructure necessary for new construction projects, particularly for large-scale projects. The level of professionalism of officials on local and central level when cooperating with large, international investors is not satisfactory. Regulations on the local level are not aligned with the Law on Construction and Spatial Planning. This creates confusion and misunderstandings when implementing these regulations. For example, sometimes the investor must pay high fees to public enterprises of local self-governments prior to obtaining the information whether his construction permit was approved. This procedure is not in accordance with the aforementioned Law.

Recommendation:

AmCham Montenegro Real Estate Committee recommends conducting trainings for clerks on local and central level enabling them to provide services in timely and more efficient manner. The Committee is willing to assist with organizing these trainings. Likewise, local regulation must be aligned with the aforementioned Law.

9. TAXES IMPOSED ON UNSOLD APARTMENTS AND OFFICE SPACES

The basic intention of the Law on Property Tax is that real estate is taxed on January 1 of the new tax year. When calculating taxes for companies, the property registered in company records as fixed assets and used for that purpose should be taxed. Accordingly, residential and commercial buildings and spaces (apartments, office spaces, pantries, basements, garages and parking spaces) that are investor's property cannot be taxed. Company records register this immobility as fixed assets supplies – unsold goods. The intention of the investor is to sell this property after construction, and not to use it as fixed assets or for any other taxation purposes.

The Ministry of Finance of Montenegro has the same opinion regarding this issue: "Bearing in mind that the purpose of the Law on Property Tax is to tax property, the apartments registered in investor's company records as "fixed assets supply" or as "undergoing investments" do not fall under the taxation of property tax." However, even with Ministry's position being clear, municipalities calculate this tax for aforementioned immobility by adopting decisions for implementing taxation. The implementation of these documents affects investor's profitability as extraordinary and unreasonable cost in completing the investment.

Recommendation:

We recommend that the Ministry of Finance uses its legal authority and calls upon municipalities to enforce the Law properly. If the Law is not clear enough it should be amended, rendering its issue more precise and clear.

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