

NEW DEVELOPMENTS IN LAND BOOK LEGISLATION

In order to comply with various conditions imposed by the European Union and as a response to the need for the registration with the Land Book of all real estate properties, the Government enacted the Emergency Ordinance no. 64/2010 (“**GEO 64/2010**”) for the amendment of the Law 7/1996 regarding the Cadastre and Real Estate Publicity (“**Law 7/1996**”).

This note endeavours to provide an overview of the main amendments brought by GEO 64/2010. Among such amendments we note that:

- the cadastre will be organised for each administrative-territorial unit and will be comprised of cadastral sectors;
- registration with the Land Book will be made *ex officio* after the finalisation of the cadastral works for each cadastral sector;
- if the owner of the property subject to registration is not identified, the possession over the respective properties can be registered with the Land Book;
- the delimitation between real estate properties can be attested only by the cadastral plan excerpt;
- lease agreements can be registered with the Land Book irrespectively of their duration;
- the ownership right over constructions may be registered with the Land Book before the completion of the construction works; and
- the National Agency for Cadastre and Real Estate Publicity will establish and maintain the INSPIRE geoportal.

This note is not intended to constitute specific advice in respect of any transaction or an exhaustive presentation of GEO 64. If you would like further information on the

matters contained in this summary or comprehensive legal advice to a particular transaction, please do not hesitate to contact us.

EX OFFICIO REGISTRATION WITH THE LAND BOOK

Before the enactment of GEO 64/2010, the general cadastre was organised at the level of each administrative-territorial unit and registration with the Land Book should have been done *ex officio* after the finalisation of the General Cadastre and the expiration of the term for solving the appeals against such works.

GEO 64/2010 replaced the term of “general cadastre” with the term of “cadastre” and amended Law 7/1996 by stipulating that registrations with the Land Book will be made *ex officio* after the finalisation of the cadastral works for each cadastre sector and after the expiration of the term for solving the appeals.

The “cadastre sector” is defined as the area delimited by constant linear elements (e.g. roads, dikes, railroads etc). By using cadastral sectors, GEO 64/2010 reduces the area for which the cadastre must be finalised in order to start the *ex officio* registration.

GEO 64/2010 details the specific steps which must be followed by each administrative-territorial unit for the cadastral technical works.

After the cadastral documentation is published, the holders of encumbrances (e.g. mortgages, privileges etc) registered with the old systems of registration (Romanian: *registrele de transcriptiuni si inscriptiuni*), except for land located in Transilvania, must request the registration of their rights with the Land Book within 30 days after publication.

If the owners or the possessors of the properties are not identified during the *ex officio* registration process, the Land Books will be created for the respective properties, with the mention that the owner is unidentified. Subsequently, the owner may be registered by filing documents which prove the ownership right.

REGISTRATION OF THE POSSESSION

In order to clarify the situation of many possessors of agricultural land who do not hold any justifying documents attesting their ownership title over the land, GEO 64/2010 amends the Law 7/1996 by stipulating that, in case the owner of the land is not identified but the possessor is, the possession may be registered with the Land Book.

The following documents must be presented to the Land Books registrars in order to register the possession in the Land Books:

- an authentic statement issued by the possessor;
- the certificate attesting that the property is registered with the agricultural register and with the relevant fiscal registers; and
- the fiscal certificate.

REGISTRATION OF LEASE AGREEMENTS, ASSIGNMENT AGREEMENTS, CONCESSION AGREEMENTS AND ADMINISTRATION AGREEMENTS

Law 7/1996 provided that superficies rights, use rights, easements, mortgages, real estate privileges as well as lease agreements and income assignment agreements concluded for a period of more than three years could have been registered with the Land Book.

GEO 64/2010 amends the Law 7/1996 by providing that also concession agreements and administration agreements (i.e. agreements concluded in order to create in favour of public authorities rights in relation to the administration of public assets) may be registered with the Land Book.

Furthermore, GEO 64/2010 provides that any lease and assignment agreements can be registered with the Land Book, irrespective of their duration.

DELIMITATION BETWEEN NEIGHBOURING PROPERTIES

As a result of various disputes encountered in practice between the neighbouring owners in relation to the limits of their properties, GEO 64/2010 expressly provides that

the delimitation between neighbouring real estate properties may be proved only with the excerpt from the existing cadastral plans.

MANDATORY REGISTRATION

According to GEO 64/2010, until 31 December 2014, the following persons must request, free of charge, the creation of Land Books:

- the holders of real rights registered with the old systems of registration (Romanian: *registrele de transcriptiuni si inscriptiuni*);
- the holders of encumbrances (e.g. mortgages, privileges etc) over real estate properties, registered with the old systems of registration (Romanian: *registrele de transcriptiuni si inscriptiuni*);
- the holders of real rights registered with the Land Books opened in areas with co-operatives on the basis of the Decree-Law no. 115/1938;
- the holders of real rights registered with the Land Books opened on the basis of Law 242/1947 for the transformation of the temporary Land Books into real estate publicity books and of Decree 2142/1930.

If the opening of such Land Books is not requested within the prescribed deadline, the encumbrances and the respective real rights will not be enforceable against third parties.

REGISTRATION OF CONSTRUCTIONS

GEO 64/2010 amends Law 7/1996, in accordance with the Land Book practice, and provides that, as a general rule, the ownership right over constructions may be registered with the Land Book on the basis of:

- the building permit;
- the handover minutes at the completion of the works; and
- the corresponding cadastral documentation.

Furthermore, GEO 64/2010 clearly stipulates that for constructions developed before the enactment of Law 453/2001 for the amendment of the Law 50/1991 regarding the authorisation of construction works the registration with the Land Book is made on the basis of:

- the building permit or, in case such building permit does not exist, the certificate attesting that the property is registered with the agricultural register as well as with the fiscal files; and
- the cadastral documentation.

In addition, in order to allow uncompleted buildings to be registered with the Land Book, GEO 64/2010 amends the Law 7/1996 by providing that the ownership right over constructions may be registered also during completion stages on the basis of the following documents:

- the building permit;
- the handover minutes regarding the physical stage of the construction, endorsed by the representative of the authority that issued the building permit;
- the cadastral documentation.

NEW PROVISIONS FOR CHALLENGING THE LAND BOOK RESOLUTIONS

GEO 64/2010 introduces a new mechanism for challenging the Land Book resolutions by providing that the interested parties may submit a request for the re-examination of the Land Book resolution within 15 days after the communication of such resolution. The re-examination request will be solved by the registrar-chief.

Furthermore, the interested parties may file a claim with the administrative courts of law or with the territorial office, which must forward it to the court of law, challenging the resolution of the registration-chief issued after the re-examination, within 15 days after the communication of such resolution.

OTHER PROVISIONS

In order to fully implement the Infrastructure for Spatial Information in the European Community (INSPIRE) Directive, GEO 64/2010 amended the Law 7/1996 by providing that the National Agency for the Cadastre and Real Estate Publicity will establish and maintain the INSPIRE geoportal, a portal which provides the means to search for spatial data sets and spatial data services, and subject to access restrictions, view and download spatial data sets from the EU Member States.

Moreover, certain provisions of the enforcement guidelines of Law 7/1996 were repealed as a result of the amendment brought by GEO 64/2010. In order to ensure the coherence of cadastre and real estate publicity regulations, new such guidelines should be enacted.

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