

In December 2015 the National Assembly of the Republic of Serbia adopted amendments to the Law on Agricultural Land. These amendments are aimed at improving the investment climate for investors closely cooperating with the governing Serbian authorities.

The agricultural sector is specially protected in every economic system and therefore every legal system as well. Agriculture as a branch of industry in the Republic of Serbia is characterised by the specificity of regulations governing this area, numerous subventions to agricultural producers and the drive to maintain agricultural production at necessary levels. However, agriculture has not been without its systemic deficiencies. The number of regulations governing this area is ever increasing, and agricultural producers are finding it more and more difficult to deal with the authorities and keep production at break-even point. The entire Serbian market has developed so that profit in agriculture is extremely low in percentage terms, and the cost effectiveness of agricultural production mostly depends on two factors - the amount of investment and the subventions received from the state. The amount of investment in agriculture is restricted by natural resources, meaning that regardless of invested working capital, the profit will ultimately, directly or indirectly depend on the area of cultivated land. The area of cultivated land will also determine the amount of subventions a farmer can claim. As the Law on Agricultural Land also regulates the leasing out of state-owned agricultural land, this law can certainly influence competition in the agricultural domain, both directly and indirectly.

The amendments to the Law on Agricultural Land which came into force in December 2015 significantly change the rules regulating lease of agricultural land owned by the Republic of Serbia.

The Republic of Serbia has, to this day, remained the owner of vast areas of arable agricultural land. The land owned by the Republic of Serbia is leased out to natural or legal persons after conducting the relevant leasing procedures before the authorities of local municipalities. Every agricultural producer (farmer), due to limited character of land as a fixed asset, has been interested in leasing as large an area of state-owned agricultural land as possible. In Vojvodina farmers have even resorted to physical altercations, blocking roads and similar methods in order to achieve the goal of leasing as much land as they can.

Certain rules relating to leasing out of state-owned land have been established over time, by introducing the right of first refusal to lease for cattle farmers and owners of irrigation systems, as well as by determining the maximum area that may be leased. However, farmers have always been interested in leasing a hectare more.

State-owned agricultural land has also been additionally protected by the fact that a lessee's non-compliance with the lease agreement, and any use of state-owned agricultural land without proper legal basis for use, would lead to the status of the offender's farm becoming "passive" - in turn leading to the offender's inability to qualify for subventions, favourable loans and the like.

Thus the leasing and use of agricultural land have been very strictly controlled, with even the slightest violation of the lease agreement or using state-owned agricultural land without the proper legal basis for use leading to penalties that could drive an agricultural producer to bankruptcy.

The state supports cattle farming and investments in irrigation by granting the right of first refusal to lease agricultural land to cattle farmers (according to number of animal units) and owners of irrigation systems. Thus cattle owners, i.e. cattle farmers, were able to lease state-owned land before other farmers and under relatively favourable terms, so as to be able to grow fodder for their livestock.

Despite such provisions and quite well regulated system, the picture has been far from idyllic. Farmers, particularly cattle farmers, have faced numerous problems, first at local self-government level where the land set aside for cattle farmers exercising the right of first refusal to lease is always land of the poorest quality and in small areas (usually less than 0.5 ha per animal unit, instead of the 1 ha per animal unit specified by the law). Agricultural inspectors are likely to initiate procedures and change cattle farmers' status to passive if they found them to be using even insignificant areas of state-owned agricultural land (20 sqm, for instance) without a proper legal basis for such use.

The application of regulations has also been unclear with regard to numerous other issues of importance for exercising the right of first refusal to lease, such as, for instance, the time when selection reviews of cows are to be carried out and determining number of animal units, the right of complaint against the agricultural land use program, existence of false cooperatives seeking restitution of cooperative land and so forth.

At the end of 2014 and beginning of 2015, the governing political factors eagerly welcomed a new foreign investment in agriculture. According to common practice, the investment in agriculture is just the first step in the overall investment, and the result of investing in agriculture will affect an investor's investments in all other branches of industry in the Republic of Serbia.

However, the agricultural land market, as the main resource this investor is interested in, could not meet the new investor's expectations, both with regard to the area of land they acquired title to, and to the area of land leased and land that could be leased in future. In order to accommodate the intentions of this new investor, the Law on Agricultural Land was amended. Apart from creating benefits for the new investor, the amendments to the Law on Agricultural Land restrict the rights of the new investor's competitors, meaning that the amendments to the Law, apart from strengthening the position of one participant in the market, are also weakening the positions of the other participants in the market (particularly cattle farmers who are also vegetable farmers as well).

The most important amendments to the Law on Agricultural Land relate to:

(i) introducing the right of first refusal to lease;

(ii) restricting the right of lease for persons who own land.

The right of first refusal to lease state-owned land is a new element in the law which enables persons with an “investment plan” to have priority over other interested parties in leasing state-owned agricultural land. A lease on the basis of right of first refusal can be for a period of up to 30 years, and the area that may be leased out is 30% of the total area of state-owned land in the territory of the local self-government unit where the head office of the person with right of first refusal to lease is located.

Considering that previous practice was to lease out the land for a period not exceeding 3 years and that the area which could be leased to one person was restricted in the absolute quantity of 100 ha, it is clear that the purpose of the amendments is to enable individuals to lease a large area of land for a period of 30 years.

Unfortunately the term “investment plan”, being the main prerequisite for acquiring right of first refusal to lease, is not defined in the Law, meaning that a local self-government unit, or the Ministry of Agriculture, has the discretionary right to decide whether a specific investment plan grants a person right of first refusal to lease agricultural land or not.

The right of first refusal to lease is not clearly defined and regulated by the amendments to the Law on Agricultural Land, but new entries into the market are clearly favoured since they have to prepare investment plans. However, what kind of investment is planned, in which amount, how the investment benefits will be measured, how the implementation of the investment plan will be monitored and other matters have not been regulated by the Law. Persons that have already invested in agriculture and are currently implementing their investment plans will probably not be able to acquire the right of first refusal to lease state-owned agricultural land.

The right to lease, or the right of first refusal to lease state-owned agricultural land has not undergone any significant change. Certain issues that have previously been worked out in practice, like taking possession of agricultural land, the obligation of continuous active status in the register of farms and the like, have now been regulated by the Law.

Apart from such technical issues, the amendments to the Law have also introduced one major change. Persons with the right of first refusal to lease (cattle farmers and owners of irrigation systems) still have the right of first refusal to lease, but the maximum area which those persons may lease is decreased by the area of land which the person, or his related parties, already own or lease.

This provision restricts the rights of systematic agricultural producers who are both cattle and vegetable farmers, which is most often the case with large producers. Investments so far usually meant privatization of agricultural combines (enterprises) formed under the Socialist regime so as to be self-sustaining, i.e. so as to cover all aspects of farming (both cattle and vegetable). These agricultural enterprises own large areas of land and deal in cattle farming as well.

As set out above, total income, and therefore market power as well, depends on the area of land being cultivated. Amendments to the Law on Agricultural Land will enable new investors to lease vast areas of land based on an undefined and abstract “investment plan”, while persons who have already invested in agriculture will be prevented from asserting their rights based on the right of first refusal to lease.

These provisions of the Law on Agricultural Land will prevent certain agricultural enterprises from conducting their agricultural activities in the future as they have done in the past.

Apart from these major changes, which will shake up Serbian agriculture and once again significantly change the rules in order to accommodate new investors, the question remains as to how these changes will affect small producers and farms, which, as a general rule, become adversely affected by ‘the big-league players’. It is also unclear how these amendments will advance Serbian agriculture in the long term, or rather whether the positive effects will be felt anywhere but in the financial statements of new agricultural investors.

It is an entrenched practice in Serbia for justifications of new legal solutions to be brief and vague, and for a detailed analysis of the effects of the law to be lacking. Justifications for new regulations often come down to claims that these are more closely defining and clarifying the application of earlier provisions. Such a lack of analysis reflected also in the lack of thorough justification for amendments to the Law prevent us from providing concrete conclusions as to the future application of this legislative novelty.

Courtesy of

Ivan Petrović, Senior Lawyer

JPM Janković Popović Mitić law firm www.jpm.rs