

Newsletter

LEADELL

Security. Trust. Passion.

February

1/2022

**AUTHORS: JĀNIS MEIJA, PAULA PAIDERE,
HENDRIK RÄTSEP, MARKO PILV, TADAS PUZINAS**

DEVELOPMENT OF REAL ESTATE PROJECTS ON A STATE-OWNED LAND IN BALTIC STATES

1. REAL ESTATE MARKET IN THE BALTIC STATES

One of the most important conditions for a successful real estate market is legal regulation establishing the procedure for the development of real estate projects on a state-owned land.

According to the current legal regulation in Lithuania, no additional fee had to be paid for the possibility to build buildings on the land leased from the state. The lessor of the state-owned land only had to pay a fixed state land lease fee. Therefore, the development of real estate projects on state-owned land did not have increased costs. However, legislation in Lithuania will change substantially on 1st of March, 2022.

Fee for the development of real estate projects on state-owned land is planned to be applied in all cases when land of the state is leased for the use of buildings. The exception where no fee is required to be paid for the development of real estate projects on state-owned land will apply when public land is leased for projects of national or regional importance, free economic zones, concessions or PPP projects, port or airport activities.

These changes will not only increase the cost of developing real estate projects on public land but also may encourage real estate developers to consider purchasing the public land.

Similar approach has been adopted in Latvia by encouraging land acquisition concerning the development of long-term real estate projects. The implementation of the principle of unity of land and building is being developed through the regulation, hence only construction of non-residential buildings (engineering structures) is allowed in Latvia on the basis of building rights.

In this LEADELL newsletter, we are providing a brief overview of the legislation on the development of real estate projects on a state-owned land in each of the Baltic States: Lithuania, Latvia and Estonia.

2. WAYS HOW TO LEASE LAND FROM THE STATE

In Lithuania, state-owned land can be leased at an auction or without an auction. State-owned land shall be leased without an auction in that case if subjects which / who own by the right of ownership or lease structures, or facilities located on the state-owned land (except for temporary structures). A person who wants to lease a state land plot where no buildings belong to him must submit an application and participate in an auction.

In Latvia, there are two types of state-owned land available for lease: a built-up land plot and a non-built-up land plot. A built-up land plot may be leased for the owner, legal possessor, or user of the existing building with a fee of 1.5% of the cadastral value of the land plot (determined by the state according to uniform cadastral valuation principles). A non-built-up land plot may be leased by any natural or legal person, provided that it qualifies for the auction. The lessee is determined in a written or oral auction – the decision on the type of auction is made by the lessor. A person who wishes to lease a vacant land plot must submit an application to the lessor. After the auction, the lessor enters into a lease agreement with a bidder who meets the lessor's requirements and has offered the highest price. The maximum term of the lease is 30 years (including all extensions).

In Estonia, assets of the state can be leased for use pursuant to a decision by the administrator of the assets by three methods: by public auction, by selective tender, or alternatively by a discretionary decision made without holding a public auction or selective tender.

3. CONDITIONS FOR DEVELOPING REAL ESTATE PROJECTS ON A STATE-OWNED LAND

New regulation of state land lease will enter into force in Lithuania from 1st of March, 2022. The new law stipulates that only those lessees whose lease term under the contract will be over three years will be eligible for construction on state land. Short-term leases will not provide an opportunity to develop a real estate project on state-owned land. Another condition is that valid spatial planning documents will provide the possibility to build buildings on the leased land.

In Latvia, to start building real estate, it is necessary to obtain rights of superficies, i.e., construction rights. The decision regarding the granting of the right of superficies on the undeveloped land plot shall be made by the institution of the public person who owns the relevant undeveloped land plot. The person entitled to construct on the undeveloped land plot shall be determined in a written or oral auction. Only non-residential buildings or engineering structures may be built based on obtaining rights of superficies.

In Estonia, to develop real estate projects on state-owned land, one must be granted the right of superficies by the administrator of the assets. The content of the right of superficies is dependent on the will of the administrator of the assets but must not contradict legislation in force and the decision to encumber the assets with a limited real right.

4. FEE FOR DEVELOPMENT OF THE REAL ESTATE PROJECT

Fee for the possibility to develop real estate on state land is planned to be applied in all cases when state land is leased for the operation of buildings from 1st of March, 2022 in Lithuania. In other cases, when public land is leased for projects of national or regional importance, free economic zones, concession, or PPP, the operation of ports or airports will not be remunerated for the right to build.

The payment for real estate development will vary depending on the volume of construction (of the built-up land plot or the total area of construction). The payment will be applied for the buildings and various engineering structures such as streets, parking lots, cleaning equipment, etc.

Increase in the built-up area	Increase in the total area of buildings	Fee rate, from the average market value of the land plot
No increase	No increase	5 %
Up to 10%	Up to 10%	10%
From 10% to 20%	From 10% to 20%	20%
From 20% to 30%	From 20% to 30%	30%
From 30% to 40%	From 30% to 40%	40%
More than 40%	More than 40%	50%

In Latvia, the fee shall be applied in all cases where a right of superficies is granted to a natural or legal person, except in cases where this affects interests essential to the state – customs control, port authority, railway infrastructure, public authorities, associated public persons or private persons performing public or state administration functions, an organization for the public benefit or social enterprises. In all other cases, the superficies rights holder pays a fee for the right of superficies. The superficies rights holder shall, in addition to the right of superficies fee, pay to the grantor of the right of superficies all the taxes specified in regulatory enactments or the compensation thereof, which is attributable to the land plot.

The amount of the lease for an undeveloped land plot or the fee for granting the right of superficies is determined in the auction. The minimum annual fee will be 1.5% of the cadastral value of the land, but not less than EUR 28 per year fee for the right to build on an undeveloped land plot. The remaining amount of the fee is up to the parties, considering the amounts offered in the auction. In addition, there are situations where the fee may be reduced or increased. These situations are summarized in the table below.

Increase of fee 50%	If constructed non-residential building (engineering structure) has not been entered in the land register within two months after the commissioning; If the superficies rights holder has performed illegal construction on the land plot; When the superficies rights holder has not demolished non-residential building (engineering structure) built based on the right of superficies within the term specified in the contract.
Reduction of fee for up to 50%	If the lessee undertakes to create new jobs; If the lease undertakes to make significant financial investments that will ensure the expansion or diversification of economic activities; If the lessee undertakes to make financial investments that will promote innovation or the creation of start-ups; If the lessee undertakes to make investments in the development of the infrastructure of the land plot with the right of superficies; If the lessee undertakes to use the land for the provisions of social protection, culture, education, science, sports, environmental and animal protection, or health functions
Reduction of fee for up to 90%	If the land is located in a degraded area and the lessee undertakes to perform one of the activities mentioned in the previous row.

In Estonia, fee applies to leasing assets owned by the State. In this case, the lessee is subject to at least a market-based use fee, which corresponds to the use fees stipulated in agreements concerning the use of similar assets on similar terms and conditions in the relevant market. With regards to real estate development, a fee does not apply in exceptional circumstances, for example, the fee may be reduced even to zero in the case of encumbering immovable property with a right of superficies for the purpose of developing the business environment. In case of lowering the use fee, the lessee must be assigned responsibility for the economic preservation of the assets, or the use fee must at least ensure the economic preservation of the asset.

In Estonia, the fee must be assessed on-case-to-case basis according to the assessment report.

In all Baltic States apart from the administrative costs, the change of the status of the land is free of charge. For example, when changing the purpose of a built-up land from “Commercial building land” to “Engineering supply network and building land”, you will not have to pay any additional fee for the execution of these changes.

5. REAL ESTATE OBJECTS TO WHOM THE FEE IS APPLIED

In Lithuania, the fee will apply not only to buildings but also to engineering structures – sites, streets, retaining walls, treatment plants and other structures – if the area of the plot to be built on will change. The development fee will not apply to demolition, simple and major repairs, and modernization of buildings when the building is being repaired or reconstructed following standard building designs approved by the Ministry of the Environment or an institution authorized by it.

In Latvia, the fee applies to any non-residential buildings or engineering structures: hotels and similar buildings; restaurants, cafes, and other catering buildings; leisure and entertainment buildings; office buildings; commercial buildings; traffic and communication buildings; garage buildings; production and warehouse buildings; water, gas, and electricity supply buildings; educational and medical buildings; non-residential agricultural buildings; canopies; transport structures; pipelines, communication, and power transmission lines; sports grounds; towers.

In Estonia, state assets may be leased for use for a fee that falls below the market-based use fee or may be leased for use free of charge if these assets are required by a non-profit organization or foundation for the performance of functions which are provided in the articles of association and are related to rescue, education, research, culture, language or youth work, or for the provision of healthcare and social services or other public purposes.