

MAY 2019

IDENTIFICATION, PUBLICIZING, RECOGNITION AND REGISTRY PROCEDURE OF OWNERLESS PROPERTY

Decree-Law no. 15/2019 regulates the legal standards set forth in article 1345 of the Civil Code [*“The immovable property without known owner is considered State property”*], laying down the procedure of identification, publicizing and recognition of the situation of rural or mixed property without known owner (“ownerless property”) and the respective registry.

For the purposes of the mentioned decree-law, the following are assumed to be ownerless property:

- (i) The rural or mixed property which, by omission on the land or tax registries, does not belong to the State, Autonomous Regions or the local authorities’ public or private property assets, nor corresponds to property of natural persons or legal entities, whether private, public or of associative, cooperative or communal nature.
- (ii) The rural or mixed property whose owner is not identified.

The procedure of identification, recognition and registry of ownerless property corresponds to the following phases:

1. Identification, publicizing and recognition of ownerless property

The identification of ownerless property is undertaken by the Institute of Registration and Notary Affairs (“IRN”) by its own initiative and is publicized through an announcement of open access on IRN’s website (available in www.irn.mj.pt) and on the Property Desk (“BUPi”) during 180 days. This announcement shall also be disclosed by: (i) the municipality and parish where the property is located, on its respective websites and through the display of public notices; (i) the Ministry of Foreign Affairs, through the diplomatic and consular network.

Any interested party may, within 180 days counting from the date of publication of the above-mentioned announcement, express any observations regarding the identification of the ownerless property through a specific form available and to be submitted in IRN's website or by means of communication addressed to the land registry service that initiated the procedure, together with the respective reasoning. IRN's directive council shall decide, with proper justification, within 20 days.

After the period of 180 days has elapsed without any observations having been presented – or if the presented claim has been refused – the identified property is considered ownerless.

2. Provisory registry and rural tax registry of ownerless property

If the above-mentioned preconditions are fulfilled, the competent land registry service shall promote, on its own initiative, the provisory acquisition registry in favour of the State for 15 years and, if the building is omitted in the tax registry, its inscription shall also be promoted.

This provisory registry does not object to the registry of acquisition in favour of a third party nor prevents the alleged owner of the property from obtaining a first land registry inscription through notarial or administrative justification.

3. Definitive registry of ownerless property

After the period of 15 years counting from the date of provisory registry has elapsed, IRN shall publicize the possibility to promote the land and tax registry in favour of the State, by means of administrative justification, through an announcement of open access on IRN and BUPi's websites, during 30 days. This announcement shall also be disclosed by the municipality and parish where the building is located and by the Ministry of Foreign Affairs, through the above-mentioned means.

Within 30 days from the date of this announcement, any interested party may pronounce regarding the verification of the mentioned conditions.

IRN shall, afterwards, inform the Directorate General of Treasury and Finance, which issues a binding opinion concerning the possibility of definitive registry of the property in favour of State. The conclusions of this opinion shall be registered in BUPi and are considered sufficient title for the promotion of the definitive registry – and subsequent tax registry – in favour of the State (together with the integration of the building in the State’s private sector).

If proof of ownership over the property was made within 15 days counting from the date of the provisory registry, the property shall be returned to the respective owner (and the provisory registry in favour of the State shall be converted into definitive registry in favour of the owner), as well as any amounts that the State has received from third parties related to the management of the property, deducted from the amounts corresponding to the expenses incurred and improvements carried out.

In fact, in order to prevent disputes, it is foreseen, for example, that the duration of property management assignment agreements must not exceed 15 years, notwithstanding its renewal, which means that while the property is not definitively registered in favour of the State, it can’t be definitively sold or encumbered.

PARES | Advogados is available to provide more client-specific information on the legislation regarding the subject of this Newsletter.

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