Prelevic Law Firm

Binaryx Protocol DAO LLC

Legal Opinion

Project in Kolasin

Podgorica, December 20th, 2024

Inquiry

Biynaryx Protocol DAO LLC (hereinafter the „**Client**") has requested a legal opinion from the Prelevic Law Firm on land on which Dukley Resort & Spa Kolasin AD Budva („**Investor**" or „**DRSK**") is constructing a tourist resort in Kolasin Municipality („**Property**"). This legal opinion aims to study and analyze the Property in relation to its compliance with the legal norms and legislation of Montenegro.

I. Regulation

In order to prepare the aforementioned, we reviewed the following:

- Property Relations Law (*„Official Gazette of Montenegro" no. 19/09*);
- Law on Contracts and Torts (*„Official Gazette of Montenegro" no. 47/08, 04/11 and 22/17*);
- Law on Spatial Planning and Construction of Structures (*„Official Gazette od Montenegro" no. 47/08, 04/11 and 22/17*);
- Law on State Survey and Land Registry (*„Official Gazette of Republic of Montenegro" no. 29/07, „Official Gazette of Montenegro" no. 73/10, 32/11, 40/11, 43/15, 37/17, 17/18 and 84/24*);
- Property Turnover Tax Law (*„Official Gazette of Montenegro" no. 36/13, 03/23 and 28/03*)
- Value Added Tax Law (*„Official Gazette of Republic of Montenegro" no. 65/01, 12/02, 38/02, 72/02, 21/03, 04/06, „Official Gazette of Montenegro" no. 16/07, 73/10, 40/11, 29/13, 09/15, 53/16, 01/17, 50/17, 46/19, 73/19, 80/20, 08/21, 59/21, 146/21, 49/22, 65/22, 140/22 and 03/23);*
- Construction notification dated 29 July 2022;
- Minutes of Inspection Supervision no. 121-1-KL-776;
- Joint Venture Agreement UZZ 306/2020 with Annex I UZZ 13/2023 and Annex II UZZ 58/2023;
- Property Sheet no. 80, Property Sheet no. 91 and Property Sheet no. 92, all CM Mušovića Rijeka, Municipality of Kolašin;
- Sale and Purchase Agreements UZZ 286/2024, UZZ 420/2024, UZZ 446/2024, UZZ 467/2024, UZZ 130/2024, UZZ 146/2024, UZZ 131/2024, UZZ 17/2023, UZZ 71/2023 and UZZ 155/2024.

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During the analysis, we are guided by the following assumptions, unless otherwise stated in the report: 1. We consider all signatures, stamps and dates in documents to be authentic, as well as legal information about the persons who signed the documents. 2. Originality, completeness and accuracy of all documents submitted in the form of copies. 3. The correctness and accuracy of the statements and information provided by the Client and/or the authorized person who provides the necessary documents and information.

II. Project

The Project involves the construction of a tourist complex (3-4 stars) identified as T2-Źlassification within the zoning document LSL Paljevine, Municipality of Kolašin. The development is divided into two zones:

- Zone A: A mountain hotel with a central square (4 stars).
- Zone B: Multi-family residential units and mountain houses (3 stars).

The construction spans across urban plots 1, 2, 3, 4, 5,6, 7, 8, 9, 10 and 11, encompassing cadastral plots 304/19 to 304/35, 305/11 to 305/19, 377/7, 377/8, 403/9, 403/10, and 403/11, within the cadastral municipality of Mušovića Rijeka.

III. Construction of the Project

i. Construction

In Montenegro, the construction of buildings is regulated by the Law on Spatial Planning and Construction of Structures. According to this law, prior to commencing construction, the investor is required to submit a construction notification -"prijava građenja", to the competent municipal authority or relevant Ministry, depending on the project's scope and classification.

The notification must include key documentations such as the technical documentation, proof of ownership or legal rights over the land, and the approved main project documentation. Article 91 of the Law stipulates that construction may only begin after the notification has been submitted and confirmed by the competent authority, ensuring compliance with planning, environmental, and safety standards.

The Investor has submitted the Construction notification dated 29 July 2022 before the Ministry of Ecology, Spatial Planning and Urbanism of Montenegro, and pursuant to the quoted provision of the Law, the competent authority, Directorate for Inspection Affairs and Licensing of the Ministry of Ecology, Spatial Planning and Urbanism conducted the inspection on August 17, 2022 in Podgorica, related to the control of the construction notification for Phases I and II of a tourist complex (3-4 star category) in the Paljevine area, Municipality of Kolašin. The inspection confirmed that the investor adhered to the necessary legal procedures for the notification and documentation submission and the Project aligns with the urban planning regulations stipulated in the Local Spatial Plan Paljevine and the relevant legal framework, as stated in the Minutes of Inspection Supervision no. 121-1-KL-776.

ii. Joint Construction Agreement

A Joint Construction Agreement is a contractual arrangement regulated under Montenegrin law, primarily governed by the Law on Obligations and related real estate and construction regulations. Such agreements establish the legal and economic obligations of the parties involved, including the allocation of responsibilities for financing, project execution, and the division of ownership rights over the constructed property.

Each party in a joint venture agreement assumes an obligation to contribute to the common goal in the manner agreed upon, whether through financial resources, work, or other contributions. In the context of joint construction, this typically includes covering construction costs, obtaining necessary permits, and ensuring compliance with urban planning and environmental laws. Economically, the agreement must define the ownership proportions (e.g., co-ownership shares) and the mechanism for allocating profits or completed real estate units, which is crucial for protecting the rights of all parties, especially in dealings with third parties.

Additionally, such agreements often include provisions ensuring the registration in the Real Estate Registry (Articles 83 and 98 of the Law on State Survey and Land Registry), enabling legal transparency and protection against claims from third parties. Proper registration is crucial for establishing legal transparency and safeguarding against potential disputes or claims from third parties. It ensures that all interests in immovable property are accurately documented and publicly accessible.

The Investor has entered into a such agreement with Best Montenegro Investment d.o.o. Budva („**BMI**“) both reffered to as the investors, on 26 October 2020, by concluding the Joint Venture Agreement („**JVA**“) initially focused on the development of a tourism project in Kolašin and the establishment of a consortium to qualify the project as part of Montenegro’s economic citizenship program, known as the Citizenship by Investment Program. The project’s primary goal was to develop a mountain tourism resort and include it on the list of development projects under the program. Initially, the properties intended for the project were co-owned both by DRSK and BMI. Afterwards, DRSK and BMI clarified and redistributed ownership rights by executing the agreements on redistribution of ownership rights, which ultimately resulted in the division of parcels, ownership shares, and rights in a manner that is currently recorded in the property sheets, as outlined in the following section on ownership structure.

However, with the termination of Montenegro's Citizenship by Investment Program on December 31, 2022, the investors needed to amend the original agreement to align it with the changed regulatory and ownership circumstances. The program’s termination removed the possibility of listing the project as part of the development program, which required applicants to invest in qualifying projects. This change necessitated a revision of their mutual obligations and the determination of respective percentages in the project.

The annex I UZZ 13/2023, concluded on 29 June 2023, reaffirms that the project is a mountain tourism resort, comprising a hotel with a central square and multi-unit residential buildings located within the area governed by the local spatial plan “Paljevine.” The annex specifies that the construction will proceed in phases, with Phase I focusing on the core elements of the resort, and regulates construction on urban plots 1, 2, 3 and 11. Additionally, infrastructure development, including internal access roads, water and sewage systems, a water reservoir, a bio-septic system, a transformer station, and other necessary facilities, will be addressed in a separate annex (annex II).

Under annex I, BMI provides construction land for Phase I of the project, including cadastral plots where three multi-family residential units (mountain houses) and project infrastructure will be built, whereas DRSK fully finances all construction works for Phase I, as well as covers additional costs, including project documentation, building permit applications, project management, legal advisory services, sales, marketing, and other expenses necessary for completing Phase I. The annex provides a detailed framework for the division of contributions and ownership between investors upon the completion of Phase I of the Project.

The annex 2 UZZ 58/2023, concluded on 24 August 2023, regulates the infrastructure investment.

IV. Ownership

i. Ownership Structure

Under Articles 53 and 55 of the Law on State Survey and Land Registry, the Property Sheet is the basic document about real estate and the rights to it, and a certified Property Sheet and an extract from the Property Sheet are public documents. A public document is an official document issued or certified by a competent authority, in accordance with applicable laws and procedures, and is deemed legally valid and binding in legal transactions, including its effects on third parties. A public authority, in this case, the Real Estate Administartion Kolašin issues a certificate on facts about which official records are kept, i.e. Property Sheets no. 80 and 91 and 92, all CM Mušovića Rijeka, Municipality of Kolašin, in accordance with the the Law on State Survey and Land Registry.

Owner	**PS**	Plot no.	**CM**	Designated Purpose	area	Property rights
DRSK	**80**	304/22	**Mušovića rijeka**	Meadow 5th class	444	1/1
		304/23		Meadow 5th class	710	1/1
		304/24		Meadow 5th class	709	1/1
		304/30		Meadow 5th class	53	1/1
		304/31		Meadow 5th class	136	1/1
		304/32		Meadow 5th class	110	1/1
		304/33		Meadow 5th class	43	1/1
		304/35		Meadow 5th class	41	1/1
		305/13		Forest 5th class	674	1/1
		305/14		Forest 5th class	664	1/1
		305/15		Forest 5th class	583	1/1
		305/16		Forest 5th class	617	1/1
		305/17		Forest 5th class	269	1/1
DRSK **BMI**	**91**	304/26	**Mušovića rijeka**	Meadow 5th class	960	149/590 441/590
		304/34		Meadow 5th class	658	149/590 441/590
		305/19		Forest 5th class	152	149/590 441/590
BMI	**92**	304/19	**Mušovića rijeka**	Meadow 5th class	703	1/1
		304/20		Meadow 5th class	704	1/1
		304/21		Meadow 5th class	492	1/1
		304/25		Meadow 5th class	6270	1/1
		304/27		Meadow 5th class	192	1/1
		304/28		Meadow 5th class	180	1/1
		304/29		Meadow 5th class	66	1/1

		305/11		Forest 5.class	275	1/1
		305/12		Forest 5th class	217	1/1
		305/18		Forest 5th class	65	1/1
		377/7		Pasture 5th class	296	1/1
		377/8		Pasture 5th class	497	1/1
		403/9		uncategorized road	296	1/1
		403/10		uncategorized road	88	1/1
		403/11		uncategorized road	23	1/1

Upon examination of the Property Sheets 80, 91 and 92 CM Mušovića Rijeka, which, as stated earlier, qualify as a public documents, it is evident that:

i. the sole proprietor, holding complete ownership rights (1/1) registered in Property Sheet no. 80 CM Mušovića Rijeka, is the business entity „Dukley Resort & Spa Kolašin" AD Budva, a joint stock company incorporated and existing under laws of Montenegro, registered before Central Registry of Business Entities under registration no. 40009759, PIN 03297357, and it registered seat and address at Zgrada Harmonija, Poluostrvo Zavala, Budva.

ii. The co-owners, holding ownership shares of 149/590 and 441/590 respectively, registered in Property Sheet no. 91 CM Mušovića Rijeka, are the business entity „Dukley Resort & Spa Kolašin" AD Budva, a joint stock company incoporated and existing under laws of Montenegro, registered before Central Registry of Business Entities under registration no. 40009759, PIN 03297357, and it registered seat and address at Zgrada Harmonija, Poluostrvo Zavala, Budva and the business entity „Best Montenegro Investment" d.o.o. Budva, a limited liability company incorporated and existing under laws of Montenegro, registered before Central Registry of Business Entities under registration no. 50306244, PIN 02465043, and it registered seat and address at Poluostrvo Zavala, Zgrada Harmonija, p.fah 81, Budva.

iii. the sole proprietor, holding complete ownership rights (1/1) registered in Property Sheet no. 92 CM Mušovića Rijeka , is the business entity „Best Montenegro Investment" d.o.o. Budva, a limited liability company incorporated and existing under laws of Montenegro, registered before Central Registry of Business Entities under registration no. 50306244, PIN 02465043, and it registered seat and address at Poluostrvo Zavala, Zgrada Harmonija, p.fah 81, Budva.

ii. Encumbrances

Under Montenegrin law, encumbrances (*tereti*) refer to legal limitations, obligations, or burdens placed on real property that affect the owner's ability to freely use, transfer, or dispose of the property. Encumbrances are typically registered in the Real Estate Registry and may include:

1. Mortgages (Hipoteka): Security interests established to guarantee the repayment of debts.
2. Easements (Službenosti): Rights granted to third parties to use or access specific parts of the property for specific purposes, such as passage.
3. Restrictions on Alienation (Zabrana otuđenja): Prohibitions against transferring or encumbering the property without consent from specific parties, often creditors.
4. Annotations (Zabilježbe): Legal notices related to ongoing disputes, agreements, or other pending matters involving the property.
5. Judicial Liens (Sudske založne prava): Claims imposed by courts to secure obligations arising from legal disputes.

Their existence is publicly recorded to ensure transparency and legal security in property transactions.

	Encumbrance	LN 80	LN 91	LN 92	Plots	
1.	**Notation of the notarial record UZZ 306/2020**	✓	✓	✓	**LN 80: 304/22, 304/23, 304/24, 304/30, 304/31; 304/32; 304/33; 304/35; 305/13; 305/14; 305/15; 305/16; 305/14;** **LN 91: 304/26, 304/34, 305/19;** **LN 92: 304/19; 304/20; 304/21; 304/25; 304/27; 304/28; 304/29; 305/11; 305/12; 305/18; 377/7; 377/8; 403/9; 403/10; 403/11,**	**26 October 2020.**
2.	**Mortgage 37/23**	✓	**x**	**x**	**304/23, 304/24, 304/30, 304/31, 304/32, 304/33, 304/35, 305/13, 305/15,**	**Zapad Banka, EUR 900k**
	Mortagage 37/24	✓	**x**	**x**	**304/23, 304/24, 304/30, 304/31, 304/32, 304/33, 304/35, 305/13, 305/15,**	**Zapad Banka, EUR 500k**

					305/16,	
3.	**Restriction on alienation**	✓	**x**	**x**	**304/23, 304/24, 304/30, 304/31, 304/32, 304/33, 304/35, 305/13, 305/14, 305/15, 305/16,**	**Zapad Banka**
	Immediate Enforcemnt rights 37/23 and 37/24	✓	**x**	**x**	**304/23, 304/24, 304/30, 304/31, 304/32, 304/33, 304/35, 305/13, 305/14, 305/15, 305/16,**	**Zapad Banka**
	SPA 146/24 and 131/24	✓	**x**	**x**	**304/22, 304/32, 305/16, 305/37,**	**SPA for purchase in construction**
4.	**JVA**	**x**	✓	✓	**LN 91: 304/26, 304/34, 305/19; LN 92: 304/21, 304/29, 304/27, 304/28, 305/11, 305/12, 377/7, 403/10, 403/11,**	**Various annotations**
5.	**Easement**	**x**	✓	✓	**LN 91: 304/26, 304/34, 305/19; LN 92: 304/25, 377/7, 403/10**	**Right of access involving pedestrians and vehicles**
6.	**SPA 286/2024**	**x**	**x**	✓	**304/21, 305/12**	**SPA for purchase in construction**

Below is a concise summary of the principal findings from the analysis of the property sheets.

1. Common Encumbrances Across All Property Sheets
    - Annotation of the Notarial Record UZZ 306/2020:
        - Present in PS 80, PS 91, and PS 92.
        - Recorded on parcels with a consistent date of 26 October 2020, serving as a foundational legal annotation.
2. Unique Encumbrances in PS 80
    - Mortgages (Hipoteka):
        - UZZ 37/2023: Loan of EUR 900.000,00 tied to parcels like 304/23, 304/24, 305/13, and others.
        - UZZ 37/2024: Loan of EUR 500.000,00 affecting parcels such as 304/30 and 305/16.
    - Restrictions on Alienation:
        - Prohibits alienation or further encumbrance of parcels without creditor consent.
    - Sale Contracts:
        - Pending and finalized agreements recorded, linked to parcels such as 304/22 and 304/24.
3. Unique Encumbrances in PS 91
    - Joint Construction Agreements:
        - Tied to parcels like 304/26, 304/34, and 305/19.
    - Easements (Službenost):
        - Access rights for pedestrians and vehicles benefiting parcel 304/38.
4. Unique Encumbrances in PS 92
    - Updated Sale Contracts:
        - Recent entries, such as UZZ 286/2024 dated 05 September 2024, related to solemnized sales for parcels like 304/21.
    - Easements (Službenost):
        - Access rights affecting parcels like 304/25, 377/7, and 403/10.
5. Cross-Referenced Highlights
    - Shared annotations (e.g., UZZ 306/2020) provide a legal foundation across all sheets.
    - Mortgages and related restrictions in PS 80 are unique but tied together by common creditor agreements.
    - Construction-related agreements and easements are consistent in PS 91 and PS 92 but absent from PS 80.

iii. Legal effects

The legal effects of the encumbrances listed in property sheets 80, 91, and 92 are significant, particularly in shaping the rights and obligations of the property owners and third parties. These encumbrances include mortgages (hipoteka), easements (službenosti), and restrictions on alienation, among others. Each type of encumbrance creates specific legal constraints that influence property usage, ownership, and transaction processes.

a. Legal Effects of Mortgages

In property sheet 80, registered mortgages serve as a security mechanism for creditors, ensuring repayment of debts. These encumbrances grant the creditor (e.g., Zapad Banka AD Podgorica) a priority claim on the property in the event of a default. The registration of these mortgages in the cadastre provides legal certainty and transparency, alerting potential buyers or other stakeholders to the secured debt. Furthermore, restrictions on alienation prevent the property from being sold or otherwise transferred without the creditor's consent. This limits the owner's autonomy over the property until the mortgage is discharged, emphasizing the creditor's enforcement rights, including foreclosure if the borrower fails to meet obligations.

b. Legal Effects of Easements

Easements recorded in property sheets 91 and 92 primarily relate to access rights for certain parcels, benefiting neighboring properties such as parcel 304/38. These encumbrances impose a legal obligation on the servient landowners to allow specific uses, such as passage for vehicles and pedestrians. Easements reduce the unrestricted use of the servient properties but are essential for ensuring accessibility to the dominant properties. These rights remain tied to the land itself, transferring with ownership, and create long-term obligations for the servient landowners to maintain the easement.

c. Annotations and Joint Construction Agreements

Annotations related to sale contracts in PS 80 and joint construction agreements in PS 91 and 92 create further legal effects by tying the properties to specific agreements or pending transactions. These annotations signal potential obligations or claims arising from these agreements, which must be resolved or considered in any future transactions involving the properties. They also serve as public notice to prevent disputes over ownership or obligations.

Overall, the encumbrances in the reviewed property sheets highlight the complexity of property rights and the importance of transparency through registration in the cadastre. These legal effects ensure the protection of creditors' interests, the enforcement of access rights, and the integrity of property transactions. However, they also impose limitations on property owners, requiring compliance with the obligations associated with each encumbrance.

V. Sale of the Project

i. Sales and Purchase Agreements

The Project is being sold through the sale of the separate units – apartments. On the date of the conclusion of this Legal Opinion, the following units of the Project were sold:

Chalet	Apartment	Buyer	Agreement
3	A4	Veranda SH.P.K Tirana	UZZ 286/2024
4	A4	Jegeni Enxhi & Jegeni Rreoland	UZZ 420/2024
5	A3	Galperin Gomez Andres & Castro de Galperin Karina	UZZ 446/2024
6	A3	Sobolieva Valentyna	UZZ 467/2024
7	A3	Damaskin R.	UZZ 130/2024
7	A4	Omelchenko I.	UZZ 146/2024
8	A2	Pacheva I.	UZZ 131/2024
8	A3	Samoylova T.	UZZ 17/2023
8	A4	Samoylova T.	UZZ 17/2023
9	A1	Galperin Gomez Andres & Castro de Galperin Karina	UZZ 446/2024
9	A2	Karyagdyyev S.	UZZ 71/2023
10	A1	Galperin Gomez Andres & Castro de Galperin Karina	UZZ 446/2024

10	A2	Kuzyakin M.	UZZ 155/2024

Pursuant to the relevant provisions of the Property Relations Law, buyers will acquire ownership rights only upon registration in the Real Estate Cadastre, as prescribed by the Law on State Survey and Land Registry. This can occur once the construction of the Project is completed, the property undergoes subdivision into individual units, and cadastral designations are assigned. Registration in the cadastre is a mandatory step to establish legal ownership and ensure the recognition of property rights.

Until then, buyers will have no ownership rights in the property but may secure their interest through the registration of their Sale and Purchase Agreements in the Real Estate Registry as a form of legal notice. This ensures that their claims are protected and legally recognized during the interim period prior to formal registration of ownership rights after the completion of construction and cadastral subdivision.

ii. Tax

Pursuant to the relevant provisions of the Value Added Tax Law and the Property Turnover Tax Law in Montenegro, buyers purchasing directly from the investor are exempt from paying property turnover tax. This exemption applies because the transaction is subject to VAT, which is already included in the purchase price. Under Article 27 of the Value Added Tax Law, sales of newly constructed properties by a registered VAT payer (such as the Investor) are subject to VAT instead of property turnover tax.

Furthermore, the Property Turnover Tax Law stipulates that this tax applies only to transactions not covered by VAT regulations, such as those between private individuals. In this case, as the sale is governed by VAT, buyers are not required to pay property turnover tax, ensuring the purchase price reflects the total cost, including VAT. This framework simplifies the transaction process and ensures compliance with Montenegro’s tax laws.

Conclusion

Based on the review and analysis of the relevant documentation and applicable Montenegrin laws, it is evident that the Project, as undertaken by the Investor, complies with all legal norms and regulatory requirements. The construction and development of the Project align with the Law on Spatial Planning and Construction of Structures, ensuring that all necessary permits and notifications have been duly submitted and confirmed by the competent authorities.

Furthermore, the property ownership structure, as outlined in the cadastral records, adheres to the provisions of the Law on State Survey and Land Registry and the Property Relations Law, providing legal transparency and protecting the rights of all parties involved. The agreements related to joint construction and ownership division are in full conformity with the Law on Obligations, safeguarding the economic and legal interests of the investors and future buyers.

The project's taxation framework complies with the Value Added Tax Law and the Property Turnover Tax Law, confirming that transactions are subject to VAT, included in the purchase price, and exempt from property turnover tax. This ensures compliance with Montenegro’s tax laws and facilitates smooth property transactions.

In conclusion, the project's legal framework is robust, transparent, and fully compliant with the applicable Montenegrin legal and regulatory requirements.

Disclaimer

This legal expertise is based on submitted copies of documents. Information, clarifications, copies of documents and their additions are obtained from the client through e-mail and other communication channels. This report is intended solely for the purpose of providing information and analysis to the Client and may not be copied, distributed, quoted, disclosed or used by third parties or organizations without our prior consent.

This legal opinion has been prepared exclusively in relation to the laws and regulations of Montenegro that are in force on the date specified in this legal opinion. For the purposes of drafting this legal opinion, the Prelevic Law Firm did not study the laws of any other jurisdiction than Montenegrin. This legal opinion was prepared based on the best knowledge and personal assessments of the lawyers of our law firm. Despite what is stated in this legal opinion, the conclusions of this legal opinion do not exclude the possibility of different interpretations, solutions or decisions of competent courts or administrative bodies in specific cases. This legal opinion is intended exclusively for internal use by the Client, and it may not be given to third parties or used for any other purposes.

Prelevic Law Firm