

GENTEMIZER

Amendment to the
Regulation on the
Qualifications of Tourism
Facilities

2024

Introduction

Significant amendments have been made to the Regulation on the Qualifications of Tourism Facilities (“**Regulation**”) in Presidential Decision number 8447 and published in the Official Gazette on 11 May 2024.

The amendments provide that **agreements regarding the utilisation, use and management of accommodation units of facilities providing accommodation services cannot be annotated to the land registry**. This limitation will be considered in applications for a tourism investment certificate and will be annotated to the declarations column of the land registry page of the relevant property following issuance of the certificate.

This regulation could indisputably have great impact on residential and mixed-use projects in **tourism zoned properties** carried out through land share sales and agreements between joint owners regarding utilisation, use and management. It should be noted that there are several ongoing residential developments in tourism zones to meet increasing demand for housing and, therefore, the real estate market will be significantly affected by these amendments.

However, the amendments have not yet been reflected in Communiqué No. 2019/1 on the Implementation of the Regulation on the Qualifications of Tourism Facilities. It is understood that **land registry practice regarding the prohibition of annotation of utilisation, use and management agreements has not yet been clarified and no circular and/or instruction has yet been issued by the General Directorate of Land Registry and Cadastre**.

Therefore, land registry practices should be carefully monitored in the coming period. We foresee that contractual alternatives will be considered to ensure that agreements on utilisation, use and management that cannot be annotated are **binding against third parties**.

Please find our assessment of the amendments and their potential impact below.

Overview of pre-Amendment Practice

In areas where a zoning plan has been approved for tourism use (i.e. “tourism zoned areas”), it is necessary to comply with the provisions of the Regulation and operate with a tourism investment or tourism management certificate.

Pursuant to the tourism legislation, **it is not possible to establish condominiums or condominium easements** in 4 and 5-star hotels and resorts (with all details and complementary elements) and in the accommodation units of other tourism facilities.

For this reason, it is not possible to sell units as independent units in tourism facilities (except for units other than accommodation units of facilities that are not 4 and 5-star hotels and resorts).

In practice, and in order to overcome this problem, land shares of the property zoned for tourism are put up for sale and shares allocated to joint owners by utilization, use and management agreements signed by joint owners subject to the legal regime outlined by Article 689 of the Turkish Civil Code No. 4721 (“**TCC**”). The agreement is annotated to the land registry and becomes binding on those who

subsequently acquire real rights to the property (new joint owners and the new rights holders of the land shares).

Accordingly, in tourism zoned areas, legal safeguards required by high quality (and “branded”) residential projects are ensured by a contractual structure similar to a management plan (but the Condominium Law No. 634 is not applicable in these areas). Depending on the nature of the project and expectations of the parties, in most cases utilisation, use and management agreements are accompanied by **arrangements specific to joint ownership such as agreements to waive pre-emption rights and to continue the joint ownership** thus fostering legal protections.

The Ministry of Culture and Tourism recently criticised these practices, which have become widespread to create independent units in tourism-zoned buildings, and requested that utilization, use and management agreements signed for this purpose not be annotated to the land registry. However, this request was not generally accepted due to the lack of a legal

limitation in respect of the right to property and has become the subject of academic and legal discussion.

Assessment of the Potential post-Amendment Practice

The Regulation stipulates that utilisation, use and management agreements for facilities cannot be annotated to the land registry. The Regulation does not, however, prohibit the execution of agreements regarding utilisation, use and management.

However, future applications for tourism investment certificates which include provisions for (i) the conclusion of utilisation, use and management agreements (whether annotated or not); (ii) the establishment of condominiums or condominium easements; or



(iii) the use of property for purposes other than accommodation facilities will not be accepted.

Moreover, it shall be annotated to the land registry that the relevant property (which is issued a tourism investment certificate) shall not be used for purposes other than tourism; that no condominium or condominium easement regime shall be established regarding the accommodation units; and that agreements regarding utilisation, use and management shall not be annotated to the land registry.

Circular No. 2021/4 of the General Directorate of Land Registry and Cadastre, which regulates condominium easements and ownership in tourism zones, may shed light on how land registry offices will process such requests.

Accordingly, if restrictions in tourism zoned areas are clearly stated in the declarations column of the land registry page, requests for condominiums and condominium easements will be dismissed. However, if the declaration only concerns classification of the property as a tourism facility, or it was understood that the property is allocated for tourism purposes, land registry offices must act according to instructions from relevant authorities and institutions.

In this context, pursuant to the Regulation on Planning and Implementation in Culture and Tourism Protection and Development Zones and Tourism Centres, **classification as a tourism facility is clearly annotated in the declarations section of the land registry page of 4 and 5-star hotels and resorts before the construction permit is issued on request of the Ministry of Culture and Tourism.** After the construction permit is issued it is also annotated, on request of the Ministry of Culture and Tourism, that the facility cannot be used for purposes other than tourism facilities; that no condominium or condominium

easement can be established; and that no independent units can be created.

In addition, an annotation that the property is a tourism facility, or that no condominium or condominium easement can be established, may be annotated to the land registry of the property pursuant to zoning plan notes. However, there was no uniform approach regarding the annotation of classification as a tourism facility or subject restrictions on the declarations column of the land registry page of immovable properties in tourism zoned areas.

With the amendment, **for facilities which are issued a tourism investment certificate, an annotation will be made to the land registry that agreements regarding utilisation, use and management cannot be annotated to the land registry.**

Tourism legislation does not make the holding of a tourism investment certificate mandatory; however, in order to benefit from investment incentives and other rights in the tourism sector, a tourism investment certificate is required. Moreover, it is observed that high-tourism municipalities require this certificate to issue a construction licence. In these cases, land registry offices may dismiss a request for annotation of utilisation, use and management agreements based on an explicit declaration in the land registry.

Overview of Current Practice

Under current practice, while some land registry offices emphasise they have not received any instructions regarding amendment of the Regulation, annotation of utilisation, use and management agreements can nevertheless be performed in some exceptional circumstances.

In principle, pursuant to the Circular on the Authorities, Duties and Responsibilities of the Provincial Organisation of the General Directorate of Land Registry and Cadastre (Circular No. 2020/3, No. 1903), land registry offices are obliged to dismiss requests contrary to legislation (in accordance with the TCC and the Land Registry Regulation published in the Official Gazette dated 17 August 2013 numbered 28738 (“**Land Registry Regulation**”)).

It should be noted, pursuant to Article 1016 of the TCC, that if the documents regarding the power of disposal and legal grounds are not complete the request shall be dismissed.

Joint owners’ powers of disposal regarding the utilisation, use and annotation of the management agreement are contained in the constitutional right to property (protected under Article 35 of the Constitution of the Republic of Turkey and Article 1 of Protocol No. 1 to the European Convention on Human Rights) as part of their rights of claim arising from the agreement.

The right to property may only be restricted by law due to public interest and in accordance with the limitation criteria set out in Article 13 of the Constitution. The interference must establish a fair balance between the interests of the public and the interests of the individual whose right is restricted, must not be disproportionate, and must not impose an excessive burden on the individual. These requirements are set out by the Constitutional Court’s jurisprudence on the right to property.

Land registry offices are also subject to these constitutional obligations to protect property rights as well as the Regulation’s amended provisions.

The General Directorate of Land Registry and Cadastre has not yet specified a regulation that governs the method land registry offices should follow when handling annotation requests. To harmonise the offices’ different approaches, **it is anticipated that the General Directorate of Land Registry and Cadastre will clarify the issue in circulars and instructions.**

The individual and sectoral effects of the amendment to the Regulation could be widespread and have therefore proved controversial - particularly in terms of **restriction of property rights by regulation** and the proportionality rule. However, no plans for its cancellation have yet been made public.

Parties whose annotation requests are dismissed may file an objection before the General Directorate of Land Registry and Cadastre (and its provincial organisation) in accordance with Article 26 of the Land Registry Regulation and apply for judicial remedies. It remains to be seen whether this will also lead to objections.

Conclusion and Our Assessment

Since the amendment does not prohibit the conclusion of utilisation, use and management agreements, it is expected that current practice will be governed **by contractual safeguards.**

Developments in judicial and administrative bodies should be closely monitored given arguments that the regulation constitutes an interference with the right to property protected by jurisprudence of the Constitutional Court.

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