

FOREIGN DIRECT INVESTMENT LAW

Law No. 4875

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OBJECTIVE AND SCOPE

Article 1. The objective of this Law is to regulate the principles to encourage foreign direct investments; to protect the rights of foreign investors; to define investment and investor in line with international standards; to establish a notification-based system for foreign direct investments rather than screening and approval; and to increase foreign direct investments through established policies. This Law establishes the treatment to be applied to foreign direct investments.

DEFINITIONS

Article 2. The terms used in this Law shall have the following meanings:

a) Foreign Investor:

- 1) Real persons who possess foreign nationality and Turkish nationals resident abroad, and
- 2) Foreign legal entities established under the laws of foreign countries and international institutions, who make foreign direct investment in Turkey.

b) Foreign direct investment:

- i) Establishing a new company or branch of a foreign company by foreign investor,
- ii) Share acquisitions of a company established in Turkey (any percentage of shares acquired outside the stock exchange or 10 percent or more of the shares or voting power of a company acquired through the stock exchange) by means of, but not limited to the following economic assets:

1) Assets acquired from abroad by the foreign investor:

- Capital in cash in the form of convertible currency bought and sold by the Central Bank of the Republic of Turkey,
- Stocks and bonds of foreign companies (excluding government bonds),
- Machinery and equipment,
- Industrial and intellectual property rights;

2) Assets acquired from Turkey by foreign investor:

- Reinvested earnings, revenues, financial claims, or any other investment-related rights of financial value,
- Commercial rights for the exploration and extraction of natural resources.

c) The Undersecretariat: The Undersecretariat of Treasury.

PRINCIPLES CONCERNING FOREIGN DIRECT INVESTMENTS

Article 3.

a) Freedom to Invest and National Treatment

Unless stipulated by international agreements and other special laws:

1. Foreign investors are free to make foreign direct investments in Turkey,
2. Foreign investors shall be subject to equal treatment with domestic investors.

b) Expropriation and Nationalisation

Foreign direct investments shall not be expropriated or nationalised, except for public interest and upon compensation in accordance with due process of law.

c) Transfers

Foreign investors can freely transfer abroad: net profits, dividends, proceeds from the sale or liquidation of all or any part of an investment, compensation payments, amounts arising from license, management and similar agreements, and reimbursements and interest payments arising from foreign loans through banks or special financial institutions.

d) Access to Real Estate (annulled by B.2003/71, R: 2008/79 decision of the Constitutional Court dated of 03/11/2008)

e) Dispute Settlement

For the settlement of disputes arising from investment agreements subject to private law and investment disputes arising from public service concessions contracts and conditions which are concluded with foreign investors, foreign investors can apply either to the authorised local courts, or to national or international arbitration or other means of dispute settlement, provided that the conditions in the related regulations are fulfilled and the parties agree thereon.

f) Valuation of Non-Cash Capital

Non-cash capital is valued within the regulations of Turkish Commercial Law. In case that stocks and bonds of companies established abroad are used as foreign capital share of foreign investors, the values determined by the relevant authorities in the home country, or by the experts designated by the courts of the home country, or any other international institutions performing valuations will be accepted.

g) Employment of Expatriates

Work permits are issued by the Ministry of Labour and Social Security for foreign personnel to be employed in the companies, branches and entities established within the scope of this Law.

In accordance with the Article 23 of the Law on Work Permits for Foreigners No. 4817 dated 27 February 2003, the definition of the key personnel within the scope of the Regulation the companies and the entities with foreign capital which shall be in the context of the Regulation, and other special procedures and principles concerning the work permits of the key personnel will be determined in a Regulation to be prepared jointly by the Undersecretariat of Treasury and the Ministry of Labour and Social Security. Provisions stipulated in Article 14, paragraph 1, sub-paragraph (b) of Law No. 4817 will not be applicable to those personnel to be employed within the context of this Regulation. The conditions under which the provisions stipulated in paragraph 1 of Article 13 of Law No. 4817 are to be applied to key foreign personnel employed will be specified in the Regulation.

h) Liaison Offices

The Undersecretariat is authorised to permit foreign companies established under the laws of foreign countries to open liaison offices, provided that they do not engage in commercial activities in Turkey.

DETERMINATION OF POLICIES AND DATA COLLECTION

Article 4. Considering the objectives of the development plans and annual programs, the general economic status of the country, trends in international investments and the opinions of the relevant public institutions and private sector professional organisations, the Undersecretariat is authorised to determine the general framework of policies concerning foreign direct investments, and for this purpose to participate in the activities of other organisations. The consent of the Undersecretariat shall be taken before any amendment or enactment of a regulation related with foreign direct investments.

For the purpose of establishing and developing an information system related to foreign direct investments, the Undersecretariat is authorised to request statistical information concerning the investments from all public establishments and institutions and private sector professional organisations.

Foreign investors shall submit the statistical information on their investments according to the procedures and principles to be determined by a regulation to be enacted by the Undersecretariat. Such information cannot be used as evidence other than for statistical purposes.

OTHER PROVISIONS

Article 5.

a) Existing Companies with Foreign Capital

The companies with foreign capital established pursuant to Law No. 6224 dated 18 January 1954 shall be subject to this Law, reserving their granted rights.

b) Regulations

The implementing principles for this Law will be determined in a regulation to be prepared by the Undersecretariat within one month following the publication of the Law.

c) Repealed Provisions

The Law for Encouragement of Foreign Capital No. 6224 dated 18 January 1954 is repealed. The references made to Law No. 6224 in the legislation are considered as referring to the related provisions of this Law.

d) Any amendments concerning the articles of this Law can only be done by means of amending or appending provisions to this Law.

PROVISIONAL ARTICLE 1. The provisions of the decrees, communiqués and circulars in effect, which are in conformity with this Law, shall remain in force until new regulations for the implementation of this Law take effect.

EFFECTIVENESS

Article 6. This Law shall come into force on the date of its publication.

ENFORCEMENT

Article 7. The provisions of this Law shall be enforced by the Council of Ministers.

- e) Public Immovable: State-owned and controlled sites allocated to the Ministry in accordance with Law; privately-owned immovable properties by the Treasury and the forest lands within the culture and tourism conservation and development regions, within these districts or its sub-regions defined by the plans and tourism centers,
- f) Law: Tourism Incentive Law, numbered 2634,
- g) Definite Allocation: Conferring of usage-rights of public immovable by establishing the easement, including autonomous and continuous rights of construction or leasing or conferring usage permit on behalf the entrepreneurs, who fulfilled the liabilities of preliminary permit period,
- g) Commission: The Land Allocation Commission constituted in accordance with this Regulation,
- h) Use Charge: Leasing, the easement or usage permit cost,
- i) Culture and Tourism Conservation and Development Sub-Region: Immovable properties within the culture and tourism conservation and development region and determined by the plan with scale of 1/25.000 or by the plans with sub-scale, containing tourism types with at least one or more of all sorts of technical and social infrastructures, culture, education and training, entertainment, trade, housing areas and those can be divided into sub-areas,
- i) Culture and Tourism Conservation and Development Regions: The regions having a high potential for tourism development or including intensive historical and cultural assets to be evaluated for the purpose of conservation, utilization, sectoral development and planned improvement and the boundaries of which are determined and declared by the Council of Ministers upon the proposal of the Ministry,
- j) Preliminary Permit: The permit given on behalf the entrepreneur for developing plan and project for tourism and carrying out other operations until the stage of definite allocation related to immovable properties which belong to public with in the context of this Regulation,
- k) Construction of Social and Technical Infrastructure Services or Contribution Share: The share for the construction in whole or in part of social and technical infrastructure services to be realized on the allocated areas in the announced allocations designated by the Ministry and offered by the investor or determined with the negotiation to cover the cost of these services and can not be less than five per thousand of total investment cost and/or the share to be determined with debate,
- l) Allocation Specification: Specification including the general provisions and special conditions of immovable properties subject to allocation and prepared in every announcement period by the Ministry,
- m) Total Investment Cost: Total amount of investment calculated by the Ministry for investment types to be determined annually according to unit costs,
- n) The Tourism Regions and Areas: The regions and areas of which locations, sites and the boundaries are determined and announced by the Council of Ministers upon the proposal of the Ministry and have been in force according to the temporary article 7 of Law before the amendments done by Law dated 24/7/2003 and numbered 4957 at Tourism Incentive Law numbered 2634,
- o) Tourism Centers: The parts or places specified to be developed on a priority basis within or outside the culture and tourism conservation and development regions, and are of importance for tourism movements and activities, locations, sites and the boundaries of which are determined and announced by the Council of Ministers upon the proposal of the Ministry,
- o) The Investor: The legal entities who have tourism investment certificate.

SECTION TWO

Procurement of Immovable Properties to the Possession of the Ministry

The prior procedures to be applied for the areas allocated to tourism

ARTICLE 5 - (1) From among public immovable within or outside of the culture and tourism conservation and development regions and tourism centers; those which have prior convenience for using in tourism activities shall be determined by the Ministry due to their historical, cultural and natural values, tourism potential, infrastructure facility, sectoral development, planned development, tourism variety, local features.

(2) The ownership situations of immovable properties in such areas shall be determined. Should a cadastre study not exist, firstly it can get made. If the land use plans are not available, they shall made/get made and approved by the Ministry.

(3) After taking possession of immovable properties to the Ministry, the land use plans of the areas outside of culture and tourism conservation and development regions and tourism centers shall be submitted to the relevant institution for the approval.

Procedures of the procurement of immovable properties intended to tourism to the possession of the Ministry

ARTICLE 6 - (1) Public immovable appointed for the procurement to the possession of the Ministry shall be allocated to the Ministry with in procedure and terms stated in the article 8 of the Law. For this purpose; planning, expropriation, subdivision, registration with the land registry, transferring and similar procedures shall be followed up and concluded by the Ministry in accordance with the related legislation.

(2) The allocations of tourism, training and recreational facilities and allocations of the lads belonging to the public institutions and associations within the culture and tourism conservation and development regions and tourism centers are abolished by the administration which gave the allocation and its disposal rights are assigned to the Ministry upon the proposal of the Ministry and with the approval of the Ministry of Finance.

Treasury-owned immovable properties outside of the culture and tourism conservation and development regions, its sub-regions and tourism centers

ARTICLE 7 - (1) In the event of an application for making investment in Treasury-owned immovable properties, the allocation can be done under the Decree of Council of Ministers dated 18/3/1986 and numbered 86/10497 within the frame of the provisions of this Regulation.

Expropriation Procedures

ARTICLE 8 - (1) Immovable properties, qualified as private properties within the culture and tourism conservation and development regions and appointed for the procurement to the possession of the Ministry, shall be expropriated in the name of Treasury in the land registry by the Ministry in accordance with Expropriation Law dated 4/11/1983, numbered 2942. These immovable properties shall be allocated to the Ministry, within one month of time following the registration, by the Ministry of Finance as per the article 8 of Law.

(2) The urgent expropriation can be realized in accordance with article 27 of Expropriation Law No. 2942, for the purpose of allocating immovable properties qualified as private properties within the culture and tourism conservation and development regions for tourism investments. The immovable properties expropriated in this way shall be registered in the name of Treasury in the land registry, too.

(3) On immovable properties qualified as public properties within the culture and tourism conservation and development regions and on immovable properties of which

expropriation costs are covered by the budget of the Ministry and registered in the name of Treasury in the land registry, the easement including autonomous and continuous right of construction to be established for the sake of the investors for the period defined in the agreement and in return of its value or for the sake of investor with the cost which will be the 0,05 % of total investment cost which correspond to the expropriated part, if this cost is covered by the investors and registered in the name of Treasury in the land registry. The whole procedure related to the easement shall be done by the Ministry of Finance.

SECTION THREE

The Allocation Announcement of Immovable and Evaluation of The Bid Proposals

Announcement

ARTICLE 9 - (1) The public lands defined as "tourism usage" by means of implementation plans, situated in or out of culture and tourism conservation and development regions or tourism centers and allocated to the Ministry are determined whether they are suitable for allocation to the entrepreneurs. Then the Ministry announces these public lands by specifying the location, implementation situation, characteristics, infrastructure set-ups, sketch plans of those lands, the investment completion duration and the deadline of application for allocation.

Application Principles and Procedures

ARTICLE 10 - (1) The entrepreneurs are responsible for submitting ;

- a) All the documents and information claimed in allocation specification prepared by the Ministry, statement and its enclosure of investor information form of which a sample copy is given in the specification, financial report prepared by a financial consultant or by institutions having an independent control authority displaying financial state of the person interested for realization the investment,
 - b) Delivery receipt relating to the definite letter of gurantee unlimited in time at an amount of five percent of the total investment cost to be determined in the allocation specification according to the unit cost of that year over the sort, type and capacity of facility to be realized on the public immovable subject to the allocation,
 - c) The letter of commitment corresponding to be agreed and accepted act in compliance with all the provisions of the allocation specification to meet the amount to be determined by the Ministry in order to realize whole or part of the social and technical infrastructure - to be realized in the allocated immovable according to the qualification of the region or the project in which the investment will be realized - or in order to meet its cost and approved by the Notary Public,
to the Ministry and notifying the address for service in the application period for the immovable announced for usage of tourism purpose in accordance with this Regulation.
- (2) The applications can be as joint-venture which is composed of two types as partnership or consortium by participating more than one real or corporate bodies.
 - (3) The partnership is the corporations of which members agreed concerning rights and responsibilities in order to realize all the work
 - (4) The consortium is the corporations of which members agreed in order to realize the work by dividing the rights and responsibilities according to their area of specialization.
 - (5) The pilot partner in partnership contracts, and coordinator partner in the consortium contracts shall be defined. For all kinds of procedures of the Ministry, the legal respondent is the pilot or the coordinator.
 - (6) A copy of the partnership or consortium contract approved by Notary Public shall be submitted to the Ministry.

(7) Should the work necessitate different specialization, the Ministry shall determine whether the consortiums can bid for the announcement in the allocation specification.

(8) In the work partnership agreements and contracts, it shall be stated that the real and corporate bodies are to be responsible for realization of their commitment as cooperative and successively. On the other hand, in the consortium agreements and contracts, the real and corporate bodies shall clarify which part of the work they commit and they realize their commitment with the coordinator partner.

(9) In case of the withdrawal of one or more partner from joint-venture except for the pilot partner or coordinator partner; the pilot partner for the partnership or the coordinator partner for the consortium shall be an authority on allocation period, providing that the pilot or the coordinator proves that the pilot partner, coordinator partner or rest will be able to complete the investment with the fifty percent of its own equity capital by means of the financial report to be prepared by a financial consultant or by institutions having an independent control authority.

(10) The applications for the allocation of public immovable to the Ministry shall be concluded by the Land Allocation Commission within six months of duration following the submission of all information and documents in the allocation specification to the Ministry. In case it is required, this duration can be extended by the Ministry.

(11) Should the entrepreneurs be foreign real or corporate bodies, financial evaluation report - to be prepared by the entrepreneurs as per this article - shall be prepared either by a financial consultant or by institutions having an independent control authority. Alternatively, the entrepreneurs shall have the financial evaluation reports made by the institutions entitled audit authority as per the legislation of their countries. The original copy and Turkish translated copy of the report that have been approved by Turkey Embassy or Consulate General, determining that it is prepared by the authorized institution in respect of the legislation of that country, could be submitted to the Ministry.

Evaluation Of The Bid Proposals

ARTICLE 11 - (1) The applications to the Ministry shall be evaluated as a matter of both financial efficiency and experiences in the sector within the context of the article 10 of this Regulation and of the subjects to be determined in the allocation specification

(2) A negotiation for a direct contribution of investors to social and technical infrastructure shall be held in between the qualified investors for the immovable having several applications. The definite letter of guarantee unlimited in time with a total amount of the first proposed contribution shall be submitted to the Ministry by the investors at the negotiation phase.

(3) (Amended: OG-16/03/2007-26464) The Commission is free whether it allocates the immovable or not, providing that it assigns the reason. Providing that a decision not to allocate is taken, the letters of guarantee of the entrepreneurs shall be returned. So long as a decision to allocate the immovable is taken by the Commission at the end of the negotiation; the letter of guarantee, delivered by the entrepreneur offering the highest contribution for the social and technical infrastructure to the Ministry in order to participate the negotiation, shall be submitted to the relevant accounting unit by the Ministry. Moreover it is required that the investor shall submit a definite letter of guarantee unlimited in time - for the difference between its proposal at the beginning of the negotiation and the one at the end of the negotiation- to the relevant accounting unit within thirty days and its delivery receipt shall be submitted to the Ministry.

(4) The entrepreneur fulfilling this liability shall be qualified for the preliminary permit by means of the decision of Land Allocation Commission. All definite letter of guarantee unlimited in time of the other entrepreneurs shall be returned.

(5) Should the investor, giving the highest offer, give up its commitment or not submit additional letter of guarantee due to the causes except for compulsory or public-oriented ones, the letter of guarantee taken in the application and the letter of guarantee in order to join

the negotiation shall be converted to cash and foreclosed to the Treasury. At this point, the Ministry offers to the investor - proposing the second highest contribution for the social and technical infrastructure - to submit the definite letter of guarantee unlimited in time with the amount offered for social and technical infrastructure at the end of the negotiation and the definite letter of guarantee unlimited in time at an amount of five percent of total investment cost to be determined according to the unit costs of that year to the relevant accounting unit within thirty days following written notification date. In addition the investor shall submit the delivery receipts of these to the Ministry. After these liabilities are met, the preliminary permit can be given to the investor by the Land Allocation Commission. Should the investor proposing second highest contribution for social and technical infrastructure not accept the offer of the Ministry, the same immovable for the allocation shall be offered to the other investors in order by the Ministry, in case of accepting the contribution amount proposed by the investor proposing second highest contribution amount.

(6) It shall be requested from the entrepreneur being granted for the preliminary permit, to pay a contribution for social and technical infrastructure as cash to the account number of *DÖSİMM (Döner Sermaye İşletmesi Merkez Müdürlüğü)* in thirty days. Provided that this amount is paid, the letters of guarantee taken at the application phase shall be return to the entrepreneur. So long as the amount is not paid in due time, the preliminary permit shall be cancelled by the Ministry and the letters of guarantee for the preliminary permit and the one for the negotiation shall be converted to the cash and foreclosed to the Treasury.

(7) The rules and procedures for the negotiation shall be identified by the Land Allocation Commission and notified to the investors. Before the negotiation phase a letter of commitment, approved by the notary public, concerning the acceptance of these rules and procedures shall be submitted to the Ministry.

(8) The parcels with only one application shall be evaluated and concluded by the Land Allocation Commission. In this situation, a direct contribution of the investor (determined by the commission) can be requested for social and technical infrastructure according to the properties of the project and the qualities of the region in which the investment to be operated.

(9) In case the parcel which the investor applied can not be allocated to that investor, the Land Allocation Commission can recommend one or more parcels, announced but not having any application for allocation, to that investor of which an assistance for the development of tourism is foreseen.

(10) (Amended: OG-16/03/2007-26464) The investor chosen by evaluating all the applications for the allocation of entire region or sub-region to one main investor by the Council of Ministers shall be qualified for the preliminary permit and the conditions of preliminary permit shall be defined. The Council of Ministers is free whether it qualifies for the preliminary permit or not, providing that it assigns the reason. The procedures shall be carried on by the Ministry according to the conditions of preliminary permit. The letters of guarantee of the rest except for the main investor qualified for the preliminary permit by the Council of Ministers shall be returned. Should the main investor, chosen by the Council of Ministers, give up its commitment due to the causes except for compulsory or public-oriented ones, the letter of guarantee taken in the application shall be converted to cash and foreclosed to the Treasury.

(11) (Appendix: OG-16/03/2007-26464) The letters of guarantee shall be calculated at two percent of total investment cost determined in item (b) of first clause of article 10 of this Regulation, at two percent of total investment cost determined in item (a) of second clause of article 16 of this Regulation and at four percent of total investment cost determined in item (a) of second clause of article 17 of this Regulation for the application made by main investors.

Allocation of Additional Area

ARTICLE 12 - (1) The public immovable of which the features are defined below can be allocated as additional area to special property or allocated investments on condition that not consisting of jointly owned parcel and proving other conditions relating to the allocation without asking for the announcement conditions in the article 9 of this Regulation:

a) The additional adjacent areas arising from the differences that the scale necessitate in transition from small scale plans to large scale plans,

b) The additional adjacent areas to enable to correct the negativity that come into existence in case of not providing the required conditions of facility type and sort to be constructed, because of different constraints such as topographical condition of the land, ground structure, vegetation etc.,

c) The additional adjacent areas in order to increase the bed capacity and parcel size, which has been decreased physically due to the definition of coastal edge line at the preparation phase of implementation plan, determined in the announcement

ç) The areas in the parcel in order to provide the capacity defined in the implementation plan and to provide parcel integrity.

(2) However, the clauses determined below shall be complied with :

a) Additional areas adjoining to the main parcel directly are allocated. In case of existences of distinctive barricade such as road, stream etc. between the main and additional areas, additional areas are not allocated.

b) The total areas of the additional lands cannot be exceed one third of total area of immovable subject to the allocation or private property and cannot be exceed total twenty five thousand meter square.

Allocation of Mechanical Facility Line

ARTICLE 13 - (1) The land shall be allocated according to the implementation plan with its cost in order to service for the tie in the activities to the tourism facilities with certificate from the Ministry or their commercial partners, on condition that to be utilized on equal conditions and operated together to the public bodies and institutions with the duty of tourism investment and management the article 9 of this regulation without any announcement.

The Composition of Land Allocation Commission

ARTICLE 14 - (1) The Land Allocation Commission shall be chaired by Deputy Secretary of the Directorate of Investment and Establishments and be composed of Director General of Investment and Establishment, Assistant Director General of Investment and Establishment, Head of Department responsible for Public Land Allocation and Head of Department responsible for Development of Investments and Planning.

(2) In case of the requirement, the first Legal Counsel of the Ministry and the expert of the subject shall be invited for their views.

(3) Department of the Public Land Allocation shall act as the reporter for the Commission.

Decisions of the Land Allocation Commission

ARTICLE 15 - (1) The Land Allocation Commission takes decision corresponding to granting for preliminary permit, transition of preliminary permit to definite allocation, extension of these permits, freezing them, cancelling frozen permits, annulment of the permits, allocation of additional area, allocation or annulment of mechanical facility line, approval of implementation work schedule or investment realization programme and recreating the allocation annuled because of the reasons except for his own defect and derived from compulsory or public-oriented ones and from the administrative and judicial disputes

acceptable by the Ministry, changing type and capacity, definite allocation, usage right and sharing transfer, changing title and the other subjects determined in the Law and this Regulation. Commission decisions become definite by approve of the Ministry. The Commission gets together with the participation of all the Commission members and the decisions shall be taken by simple majority. Dissential votes shall be determined with the detailed reasons.

SECTION FOUR Allocation Procedures

Preliminary Permit

ARTICLE 16 - (1) The entrepreneur shall be granted for the preliminary permit - for not longer than six months term in the areas not having approved implementation plan - for mapping and planning works, confirmation procedures, incorporating a tourism-oriented joint-stock company and for the other procedures in consideration of the preliminary permit fee.

(2) In order that the preliminary permit comes into force;

a) Delivery receipt relating to the definite letter of guarantee unlimited in time, at an amount of five percent of the total investment cost being delivered to the relevant accounting unit,

b) The letter of commitment for preliminary permit approved by the Notary Public,

c) The receipt copy relating to annual preliminary permit fee being paid into account of relevant accounting unit,

shall be submitted to the Ministry by the investor within one-month term following the registered notification date of the preliminary permit to the investor.

(3) Preliminary permit shall begin on the submission date of these documents above to the Ministry, and then the definite letter of guarantee unlimited in time, submitted to the Ministry at the application phase, shall be returned.

(4) Unless these requirements are met, the request of the investor for preliminary permit shall be regarded as invalid and the definite letter of guarantee unlimited in time, taken at the application and negotiation phases shall be converted to the cash and foreclosed to the Treasury.

(5) The entrepreneur shall be granted for the preliminary permit at the most four months term in the areas having approved implementation plan.

(6) In case of a request in order to be extended the preliminary permit period by the entrepreneurs and of the acceptance of this request by the Ministry, preliminary permit periods could be extended in six each months periods in the areas not having approved implementation plan and in four each months periods in the areas having approved implementation plan and in consideration of its fee at most three times.

(7) The main investor shall be granted for the preliminary permit, for one year term. This period could be extended in one each year periods and in consideration of its cost at most three times.

(8) In the event of preliminary permit procedures being completed before given or indulged preliminary permit period, preliminary permit fee delivered as cash shall be deducted from definite allocation cost.

(9) However if there are reasons derived from compulsory or public-oriented ones and from the administrative and judicial disputes acceptable by the Ministry, preliminary permit period is frozen and preliminary permit fee is not taken for the frozen period.

(10) Unless the investor meets the liabilities for the reasons except for compulsory or public-oriented in the period of preliminary permit, the preliminary permit shall be cancelled by the Ministry. In this case, preliminary permit fee collected as cash is not returned and the definite letter of guarantee unlimited in time taken at the application and negotiation phases shall be converted to the cash and foreclosed to the Treasury.

(11) Unless the investor meets the requirements for the reasons compulsory or public-oriented, within given or extended periods of preliminary permit; upon request of the

investor, preliminary permit shall be cancelled by the Ministry and the letters of guarantee shall be returned without interest.

(12) For main investor, Commission's annulment decision of the preliminary permit and the decision relating to the conversion definite letter of guarantee unlimited in time to the cash and foreclosing it to the Treasury shall come into force by the decision of Council of Ministers.

(13) In this case, the public land to be discharged is evaluated in accordance with the sentences of the article 10.

(14) Within the period of preliminary permit, the investor shall :

a) Prepare 1/1.000 scale implementation plan of the investment area and make it approved to the relevant institutions in the areas not having approved implementation plan. Realize or be realized allotment, integration, relinquishment and similar operations of the immovable subject to the preliminary permit.

b) Obtain application drawings approved by the Administration of Land Registry and Surveying and tree survey plan approved by the Ministry of Environment and Forestry for the forest region.

c) Incorporate a joint-stock company, of which fields of activity includes tourism.

1) The incorporated joint-stock company should have an amount of capital at least fifty-one percent of the total investment cost of the immovable for which have been granted the preliminary permit.

2) The share of real or corporate bodies in the joint-stock company, granted for the preliminary permit, cannot be below fifty-one percent.

ç) Obtain tourism investment certificate or main tourism investment certificate.

d) Submit the document relating to contribution to the social and technical infrastructure being paid into account of relevant accounting unit.

(15) The rate of partnership or consortium cannot be below fiftyone percent for the joint-stock company to be incorporated by the partnership or consortium at preliminary permit phase and these rates shall be distributed as per the rate defined in partnership or consortium contract among partners.

(16) In addition to items determined above, the main investor is obliged to prepare implementation work schedule or investment realization programme and submit to the Ministry, in the event of allocating the entire culture and tourism conservation and development region to the main investor. Moreover, the main investor is responsible for submitting the "management plan" to the Ministry as a complementary to the implementation plan. In this plan, it shall be explained how the entire area allocated to itself to be managed after the investment is completed. This programme and the management plan shall be approved by the Land Allocation Commission. Management plan shall be registered to the implementation plan notes.

Definite Allocation

ARTICLE 17 - (1) The entrepreneur granted "tourism investment certificate" or "main tourism investment certificate" by fulfilling the liabilities of preliminary permit period shall be qualified for the definite allocation by means of the decision of Land Allocation Commission.

(2) In order that the definite allocation comes into force;

a) Delivery receipt relating to the definite letter of guarantee unlimited in time, at an amount of ten percent of the total investment cost being submitted to the relevant accounting unit,

b) A copy of the company board of directors' decision, relating to definite allocation conditions being accepted and committed, approved by the Notary Public, shall be submitted to the Ministry by the investor within one-month term following the registered notification date of the definite allocation decision to the investor.

(3) (Amended: OG-16/03/2007-26464) After delivery receipt relating to the letter of guarantee demanded at the definite allocation phase, being delivered to the relevant accounting

unit, is submitted the Ministry, the letter of guarantee taken for preliminary permit shall be returned. If the realization of the construction being completed at a rate of fifteen percent is notified by the administration giving the construction certificate, the letter of guarantee demanded at definite allocation phase shall be returned.

(4) After submission of these documents to the Ministry; the easement including the independent and continual right of construction, leasing or land rights shall be requested from the Ministry of Finance by the Ministry.

(5) The entrepreneurs shall be qualified for the allocation of fourtynine years; the main investors shall be qualified for the allocation of seventyfive years by means of the decision of Land Allocation Commission. Definite allocation shall come into force as from the notification date.

(6) It is compulsory to complete the investment within the period of time determined in the announcement. However, in case of the failure in completion of the investment in its period of time due to the reasons except from the investor, additional period can be given to the investor provided that this additional period does not to exceed the investment period foreseen at the beginning. If the investment cannot be completed within this additional period, the allocation shall be cancelled and the definite letter of guarantee unlimited in time shall be converted to the cash and foreclosed to the Treasury. In this case, all sorts of buildings and facilities on the immovable shall be foreclosed to the Treasury without charge. The investor cannot claim any right and charge for these items.

(7) The allocation period shall be frozen, in the events that the investment cannot be started or realized because of the compulsory or public-oriented reasons and which derived from the administrative and judicial disputes acceptable by the Ministry. The period passed between the date of Commission's decision about freezing the allocation period and the date of Commission's decision about starting the frozen period shall be added to the allocation period and utilization fee are not paid for this period of time.

(8) However, in case of request of the investor documenting the liabilities cannot be completed because of the reasons except for his own defect and derived from compulsory or public-oriented ones and from the administrative and judicial disputes acceptable by the Ministry, the definite allocation shall be cancelled and the letter of guarantee shall be returned. In this case, the utilization fees until the annulment date of the definite allocation shall be collected.

(9) All kinds of buildings, facilities and independent units or other areas that take place in the parcels being formed by means of the plans in the areas allocated to the main investor could be rented, operated. Alternatively the right of construction or usage right establishing on these units in favour of the main investor could be alienated to the third parties on condition that these procedures have been foreseen in the allocation contract and have not exceeded the allocation period.

(10) The main investor is responsible for fulfilling the liabilities of the third parties derived from the allocation contract and conditions to the Ministry. In addition, third parties are responsible for fulfilling the same liabilities to both the main investor and to the Ministry. These liabilities shall be determined by the definite allocation contracts.

(11) (Amended: OG-16/03/2007-26464) In addition to the letter of guarantee determined in eleventh clause of the article 11 of this Regulation, the main investor shall submit a second definite letter of guarantee unlimited in time for realization the social and technical infrastructure of which investment cost to be calculated as per the unit costs to be procured from the relevant administrations and to be approved by the Commission. This letter of guarantee shall be returned, after completion of social and technical infrastructure and taking the usage certificate from relevant administrations.

(12) (Amended: OG-16/03/2007-26464) For the facilities to be realized by the sub-investors, in the event of delivery receipt relating to the amount of letter of guarantee falling to sub-investment share which is determined in eleventh clause of the article 11, being delivered to the relevant accounting unit shall be submitted to the Ministry, the letter of guarantee relating to that facility taken from the main investor shall be returned.

(13) The allocation of the investor, which is not able to meet the requirements of the definite allocation, shall be cancelled by the Ministry and the letters of guarantee shall be

foreclosed to the Treasury. In this case, all sorts of buildings and facilities on the immovable are foreclosed to the Treasury without charge. The investor cannot claim any right and charge for these items.

(14) The Commission decision relating to the annulment of definite allocation on behalf the main investor and foreclosing the letters of guarantee to the Treasury by converting to cash, shall come into force with approval of the Council of Ministers.

(15) When the allocation of the main investor is annulled, the rights of the sub-investors shall be conserved. In case of not being found another main investor, the allocation of the sub-investors shall be carried on in a form of implication parcels by the Ministry.

(16) In this case, the article 9 of Regulation shall be enforced for the public land to be discharged.

Immovable Allocation to the Public Bodies and Institutions

ARTICLE 18 – (1) (Amended: OG-16/03/2007-26464) Provided that it is found public benefit, they obtain tourism investment certificates, and it is suitable for the use determined in the Implementation Plans; the public immovable allocations shall be made without any announcement to the public bodies and institutions that are responsible for the tourism investment and enterprising according to the timetable and revenue cost which are determined in this regulation.

(2) However, the public bodies and institutions cannot hand over this allocation for their names to third bodies and change the type. Otherwise the allocation shall be cancelled.

Allocation Types

ARTICLE 19 – (1) Within the content of this regulation, the public immovable, shall be allocated to the entrepreneurs through the following ways:

(a) Leasing: The facility regarding its type, class, and capacity, and local properties may be rented to entrepreneurs for the purpose of tourism use of the period of time to be defined by the Commission.

(b) The Easement: An easement, including the independent, and continuous of quality, shall be established on the public immovable in order to be used for the purpose of tourism use of the period of time to be defined by the Commission.

(c) Permit of Use: A permit of use on the places of the public immovable, which are impossible to register to the deed officially, shall be given in order to be used for the purpose of tourism for the period of time to be defined by the Commission due to the special specifications.

(2) Upon the demand of the Ministry, all the procedures for leasing, the easement, and permit of use shall be operated by the Ministry of Finance within the scope of this regulation.

Preliminary Permit Cost

ARTICLE 20 – (1) The annual preliminary authorization price shall be the one per thousand of the total investment cost. Preliminary authorization price shall be paid to the relevant accounting unit to the Treasury in cash within the time determined by the Ministry. However this amount will be reduced 50 percent for the investments in the cities placed within the scope of the article 2 of the Law of the Incentives of the Investments and Employment and Amendment Law of some Laws dated 29/01/2004 and numbered 5084.

Use Charge

ARTICLE 21 – (1) The beginning date of the use charge is the definite allocation date. The use charge to be kept as revenue for Treasury shall be calculated annually from this date and paid to the related accounting unit.

a) (Amended : OG-16/03/2007-26464) The use charge of the allocated immovable shall be five per thousand of the total investment cost. This ratio shall be two and a half (2,5) per thousand in the facilities for thermal and winter tourism. However these amounts shall be reduced fifty percent for the investments in the cities placed within the scope of the article 2 of the Law of the Incentives of the Investments and Employment and Amendment Law of some Laws numbered 5084. Use charge for the following years shall be calculated as decreasing two percent deformation ratio from the amount of the use charge of after this use charge is raised according to the rate of increase in the Producer Price Index-announced by the Turkey Statistical Institution and be cashed. However, the amount calculated by this method shall not be lower than the use charge of the previous year.

b) An amount of one percent of the total annual operating income shall be taken by the Treasury after the opening of the facility. This ratio shall be the five per thousand for the allocation of thermal and winter tourism. However these amounts shall be reduced fifty percent for the investments in the cities placed within the scope of the article 2 of the Law of the Incentives of the Investments and Employment and Amendment Law of some Laws numbered 5084. Operating incomes shall be composed of both every kind of documents obtained by the sold goods and services through the main activities of the enterprise, interest cost and foreign currency rate, interest and rent incomes, and other incomes. The financial reports presenting the annual operating incomes shall be approved by the financial consultant authorized by the Law of Public Accountancy, Public Accountant Financial Advisor, and Certified Councillorship dated 01/06/1989 and numbered 3586 and be submitted to the relevant Revenue Department/Fiscal Directorate at the end of May following the balance sheet term and the ratio to be gained from the business proceed shall be deposit to the Revenue Department/Fiscal Directorate. Also; in case of renting the management of the whole or part of the facilities to the third parties or public bodies, there shall be an amount of one percent of both the hiring payment of the leaser and of the total annual business proceeds after reduced the hiring payment of the lease holder to be paid to the Treasury. This ratio shall be five per thousand for the allocation of thermal and winter tourism. However these amounts shall be reduced fifty percent for the investments in the cities placed within the scope of the article 2 of the Law of the Incentives of the Investments and Employment and Amendment Law of some Laws numbered 5084.

c) Should the allocated land be a forest land, Forest Peasant Development revenue shall be taken for once only and it shall be entered as receipt to the budget as per the article 5 of the Provisions and Procedures Corresponding the Forestry Peasants Development Services published in the Official Gazette dated 31/12/2005 and numbered 26040. The Forestry Peasant Development Revenue is at amount of three percent of the part of the total project which is located in the forest area. In addition in the event of a change in type, sort or capacity of the facility, the cost to be calculated according to the unit costs in the date of issuing the investment or operation certificate shall be paid each time.

2) In the allocations to the main investor; the charges for the other usages which can not be certificated by the Ministry but found in the implementation plan shall be determined in the Commission decision to be taken relating to definite allocation.

3) For the ones who have been made the allocations of additional land without any announcement according to exception in the article 12 of this regulation, the first year use of charge and ratio of proceeds shall be calculated over the capacity obtained from the ratio of additional lands in the sum of the main land and the additional land.

4) In the change of type and class in the facilities having tourism investment or operation certificate, new use of charge shall be calculated over the unit costs for the year that the change has been made in the certificate. For the capacity increases, from the date that the

change has been made, additional use of charge shall be calculated over the unit costs for that year.

5) The settled new or additional prices shall be paid in cash to the related accountant unit within the thirty days after the notification by the investor.

6) There will be no discount in the use of charge in case of any decrease in the type, class and capacity of the facility.

7) If the use of charge is not paid within the 30 days time following two years, the definite allocation and the easement that is registered in the land registry shall be annulled. In this case, all the facilities and buildings on the land shall return to the Treasury. The investors may not seek any competence, fee or any compensation in connection with this procedure.

Cost for Allocation of the Buildings

ARTICLE 22 - (1) The immovable properties and Structures existing on them allocated to the Ministry as per provisions of the law and of this Regulation may also be allocated by the Ministry to real persons and legal persons. On the basis of this article;

(a) A use of charge at an amount of five percent of the total investment cost shall be charged where the structures allocated are used by the private entrepreneurs for the touristic purpose without modification. This ratio shall be two and a half (2,5) per thousand in the facilities for thermal and winter tourism. However these amounts shall be reduced fifty percent for the investments in the cities placed within the scope of the article 2 of the Law of the Incentives of the Investments and Employment and Amendment Law of some Laws numbered 5084.

(b) In case of an additional capacity increase for the purpose of touristic use after the realization of an investment project on the allocated immovable, the amount of five per thousand of the investment cost besides the use charge defined in this article of (a) clause shall be charged. This ratio shall be two and a half (2,5) per thousand in the facilities for thermal and winter tourism. However these amounts shall be reduced fifty percent for the investments in the cities placed within the scope of the article 2 of the Law of the Incentives of the Investments and Employment and Amendment Law of some Laws numbered 5084. Also, after operating these facilities allocated according to this article, the ratio defined in the item (b) of first clause of article 21 of this Regulation shall be taken by the Treasury.

SECTION FIVE

Audit and Termination of Rights

Audit

ARTICLE 23 - (1) The audit of places which has been leased, established the easement or given the permission of use shall be done by the Ministry save for the authorization rights of the Ministry of Finance provided for the related legislation.

(2) (Amended: OG-16/03/2007-26464) In case of the annulment of the certificate, a period of six months shall be given to the investor to take a new certificate. If the new certificate is not taken within this period, the allocation shall be annulled and the provisions of the article 24 of this regulation shall be applied.

Cancellation of the Allocation and Annulment of the Contract

ARTICLE 24 - (1) The definite allocations and the contracts of the investors who do not abide by the terms of the allocation, contracts of the easement, leasing and permit of use shall be cancelled by the Ministry. In such circumstances, all rights of the investors in connection with their investments up to that moment shall cease and the facilities together with their auxiliary buildings constructed shall revert to the Treasury as part of the land itself and the guarantee shall be converted to the cash and foreclosed to the Treasury. The investors may

not seek any competence, fee or any compensation in connection with this procedure. In case of any damage to the immovable or facilities constructed on the land by the investors, also this compensation shall be taken.

Termination of the Allocation Period

ARTICLE 25 - (Amended: OG-16/03/2007-26464) - (1) The buildings and facilities together with their auxiliary buildings, found on the public immovable of which its allocation is cancelled or of which allocation period is terminated, shall revert to the Treasury in good condition and in operation without any payment. The investors may not seek any competence or fee in connection with this procedure.

(2) Immovable Properties of which the definite allocation period has terminated in case of the continuation of the use of the same purpose may be allocated by the Ministry without any announcement for about maximum forty-nine years to the same investor under the condition of the use charge and operating income specified in the article 22 of this regulation.

(3) Immovable properties of which the definite allocation period is cancelled or of which the definite allocation period is terminated and on which the buildings and facilities together with their auxiliary buildings whose ownership is reverted to the Treasury due to the non allocation to the same investor according to the item 2 of this article, together with its auxiliary buildings may be allocated by the Ministry to new investors for about maximum forty-nine years, under the use charge and income operation conditions determined in the article 22 of this regulation.

SECTION SIX

Various and Final Provisions

Social and Technical Infrastructure Services

ARTICLE 26 - (1) Plots of land in culture and tourism conservation and development regions, sub centers and tourism centers, the built or cost of infrastructure wholly or partially lacking may be required as an allocation or additional allocation must from the entrepreneur. The amount of contribution share for social and technical infrastructure cost shall be determined by the Ministry and cashed to the bank number to be determined by the Ministry.

2) In case of not being able to cover the social and technical infrastructure services in the area allocated immovable, the Ministry shall demand to form another legal body from the legal bodies to meet these services. The investors shall obey the decisions of this legal body and the contributions shall be paid.

3) The main investor shall responsible for the realization of the entire social and technical infrastructure in the area allocated according to the requirements in the implementation plans.

4) Should the main investor not realize the commitments in the allocation contract, the Ministry shall make someone done by the way the Commission determined by converting the guarantee relating to social and technical infrastructure to the cash.

Allocation Free of Charge

ARTICLE 27 - (1) Plots of land in the areas of culture and tourism conservation and development regions and tourism centers (referred to in Article 5 of this regulation) can be allocated to both the public bodies and unions formed by local bodies that are set aside for purification of waste water, solid waste facilities and other public infrastructure of the touristic facilities without any announcement and free of charge. However this allocation can be concerned as minimum one percent of the cost of the real property to be determined by the

Commission for the firms having operations in the region or for the firms incorporated by the local bodies.

Immovable that cannot be Allocated

ARTICLE 28 - (1) Preliminary permit can not be given to the ones who are forbidden to enter to bidding by the laws of Government Bidding Law dated 08/09/1983 and numbered 2886 and Public Bidding Law dated 04/01/2002 and numbered 4734 within the period of the application and preliminary permit according to the Regulation. The Ministry shall control the applicants whether they are forbidden or not after the application and before the preliminary permit.

Abandonment of Annotation and Registration

ARTICLE 29 - (1) In case the allocation is terminated, incumbrances, annotations and registrations inserted in the land registry records shall be abandoned by the Ministry of Finance.

Details Not Provided For in the Regulation

ARTICLE 30 - (1) The Ministry, Ministry of Finance and/or Ministry of Environment and Forestry can do embodiments on the subjects for which these institutions are responsible and which are relating to the application of this Regulation.

Permissions by Other Public Bodies

TEMPORARY ARTICLE 1 - (1) Both the permissions and the process related to leasing, allocation, easement and use right by other public bodies for the immovable in or out of the culture and tourism conservation and development regions, culture and tourism conservation and development sub-regions and tourism centers shall be executed by the institution making the allocation. These immovable can not be allocated to the Ministry.

Additional Areas

TEMPORARY ARTICLE 2 - (Appendix: OG-16/03/2007-26464) - (1) The administrative procedures of the immovable, of which the allocation decision is taken as the additional areas by the Commission according to the articles of the former Regulation on the Public Land Allocation to Tourism Investments which comes into force by the decision of the Council of Ministers dated 31/03/1983 and numbered 83/6285 before the date of 21/07/2006 and not completed, shall be completed according to this regulation except the restrictions in the (a) and (b) items of second clause of article 12.

Changing the Letter of Guarantee

TEMPORARY ARTICLE 3 - (Amended: OG-16/03/2007-26464) The letters of guarantee taken from the main investor before 16/03/2007 shall be change upon the request of the related authority as per in accordance with the provisions of the article 2 of this Regulation.

Operative effect

ARTICLE 31 - (1) This regulation shall come into force its publication.

Execute

ARTICLE 32 - (1) The Ministry of Culture and Tourism shall operate the provisions of this regulation.

(Official Gazette Date: 21/07/2006; No: 26235)

REGULATION ON PUBLIC IMMOVABLE ALLOCATION TO TOURISM INVESTMENTS

SECTION ONE

Objectives, Scope, Legal Basis and Definitions

Objective

ARTICLE 1 – (1) The purpose of this Regulation is; to establish the principles and procedures related to public immovable allocation to the Ministry within or outside of the culture and tourism conservation and development regions, of these districts or its sub-regions determined by the plans and of the tourism centers; expropriation of immovable properties subject to private ownership, registration in the name of Treasury in the land registry and allocation to investors, the establishment of the easement including autonomous and continuous rights of construction on these immovable properties, leasing, management and transfer operations and related with these operations term, price and termination of rights thereon and other conditions to make them use for tourism.

Scope

ARTICLE 2 – (1) This Regulation comprises the principles and procedures related to public immovable allocation to the Ministry within or outside of the culture and tourism conservation and development regions, of these districts or its sub-regions determined by the plans and of the tourism centers; expropriation of immovable properties subject to private ownership, registration in the name of Treasury in the land registry and allocation to investors, the establishment of the easement including autonomous and continuous rights of construction on these immovable properties, leasing, management and transfer operations and related with these operations term, price and termination of rights thereon and other conditions to make them use for tourism.

Legal Basis

ARTICLE 3 – (1) This regulation has been prepared on the basis of the article 8 of Tourism Incentive Law dated 12/3/1982 and numbered 2634.

Definitions

ARTICLE 4 – The following terms shall have the meanings given here when used in this Regulation;

- a) The sub-investor: The legal entities who take over at least one of immovable properties allocated to the main investor.
- b) The main investor: Corporate or legal person who shall realize tourism investment or who provides that tourism investment to be realized with all social and technical infrastructures determined by plan decisions by the Decree of Council of Ministers within the culture and tourism conservation and development region as a whole or within its sub-regions which were determined by the plan,
- c) Allocation to the Ministry: Assignment public immovable in possession of the Ministry for use them in accordance with the purposes of Law and this Regulation,
- ç) Ministry: The Ministry of Culture and Tourism,
- d) The entrepreneur: Turkish or foreign corporate or legal persons and business associations and consortiums who have applied to the Ministry for making tourism investment,