

**DEVELOPMENTS ON COASTAL INVESTMENTS: New Communiqué on National Estate No. 373**

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**Introduction**

On October 8<sup>th</sup> 2016, the General Communiqué on National Estate No. 373 (“Communiqué”) has been published on the Official Gazette. The Communiqué governs principles regarding easement right and/or right of usage to be granted to financiers for them to construct marinas, landing stages, piers and berths on state-owned or treasury lands.

The Communiqué brings an in-depth roundup for coastal investments, extending from the principles as to the tender process for granting the easement right, to the liabilities of the financiers. To that end, there is no doubt that the Communiqué will draw the attention of investors contemplating to invest in coastal structures.

**Roadmap of investor applications**

Firstly, as specified under Article 4 of the Communiqué, financiers who are willing to invest in treasury lands should apply to the Ministry of Transport, Maritime Affairs and Communication (“MoTMAC”) with their preliminary project and prefeasibility report. Once they obtain MoTMAC’s approval, they should then submit the zoning plan proposal to the Provincial Directorate of Environment and Urbanization.

Required content of the prefeasibility report is listed under Article 5 of the Communiqué, which groups the required content under four main titles:

- (i) General information on the project (*e.g. the location of the project, its definition, purpose and areas of service, capacity, transportation*),
- (ii) Justification of the project (*e.g. the developments in Turkish and global financial landscape, current yacht traffic in the area.*),

- (iii) Financing of the project (*e.g. the amount of investment, termination plan, method of investment*) and
- (iv) Analyses of the project (*e.g. direct and indirect impact of the project on a regional scale and other social impacts of the project*)

### **Tender process for the easement right/right of usage**

General principles on negotiated tendering under the State Procurement Law No. 2886 will apply to tender process for granting the easement right and/or right of usage, as per Article 6 of the Communiqué. In this respect tender process will be conducted in accordance with Article 51 (g) of the State Procurement Law No. 2886<sup>1</sup>.

That said, financiers who are owners, lessees or right holders of neighbor lands located behind the state-owned and/or treasury land subject to the investment will benefit from an exception under the Communiqué. These investors, provided that they possess the net equity amount equivalent to at least 20 % of the investment amount and on the condition that the neighbor land is integral with the plan and the project subject to investment and it is established that they should be used jointly, can be directly granted with the easement right or the right of usage without the issuance of a tender notice<sup>2</sup>.

### **Preliminary permission**

The Ministry of Finance (“Ministry”) can grant the financier a preliminary permission if deemed necessary for completion of the bureaucratic stage<sup>3</sup>. Validity period of the preliminary permission is limited to one year unless extended by the Ministry. In order to obtain an extension, the financier should (i) make the required payment for the extension and (ii) prove that the bureaucratic stage cannot be completed due to advenient reasons. In any

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<sup>1</sup> Article 51 of the State Procurement Law No. 2886 governs the situations where negotiated tendering is allowed. Referenced paragraph (g) reads as “*renting of, barter of and establishment of an incorporeal right on movables and immovables privately owned by State and renting of and establishment of an incorporeal right on the locations under the State’s disposal, which are closed to or not suitable for open tendering due to their purpose of use, advantage to administration or urgency*”

<sup>2</sup> Article 6 of the General Communiqué on National Estate No. 373

<sup>3</sup> Transactions such as registration, parceling, amalgamation or preparation and amendment of the zoning plan.

case, validity period cannot exceed four years.<sup>4</sup>

The Ministry can refrain from extending the preliminary permission period if it decides to utilize the land for other purposes, in which case the remaining period of a current preliminary permission will be cancelled by refunding the deposited payment *pro rata* and the investor would not be able to set forth any claims for the absence of an additional extension. Similarly, in case it is apparent that the bureaucratic stage cannot be completed in due time, without the fault of the investor, the agreement will be terminated upon the notification of the investor and if deposited in advance, the amount for the extension period and the security payment will be returned to the financier.

Renouncement of the financier from its commitments before the end of the agreement will result in the termination of the agreement by the administration. In such a case, the financier's security payment will be registered as treasury revenue and the amount for the extension period will not be returned.

### **Obtaining, assigning and terminating the easement right/right of usage**

Provided that the financier completes the bureaucratic stage in due time, an easement right or right of usage will be established in favor of the financier. The period of the easement right or the right of usage, in any case, cannot exceed thirty years but can be suspended by the Ministry in accordance with the provisions under Article 8 of the Communiqué<sup>5</sup>.

Article 8 of the Communiqué obliges the financier to start the construction in six months as of the delivery of the property and to complete it in two years. The two-year term can be extended to a maximum of five years.

The Communiqué also grants the financier the right to assign its easement right/right of usage on Ministry's own initiative and approval<sup>6</sup>.

As per Article 11, the easement right/the right of usage will be terminated once the agreement is expired. Upon the audit to be conducted in accordance with Article 10, if the Ministry

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<sup>4</sup> Article 7 of the General Communiqué on National Estate No. 373

<sup>5</sup> In circumstances such as force majeure, legal or physical impossibility hindering the exercise of the right.

<sup>6</sup> Article 9 of the General Communiqué on National Estate No. 373

detects any error or deviancy, it will request from the financier to recover those irregularities. Non-recovery of the irregularities in due time will give the Ministry the right to terminate the agreement and to demand a compensation payment equivalent to 25 % of the easement right/the right of usage amount in the current year. In this case, the financier's security payment will also be registered as treasury revenue.

Upon the termination or expiration of the agreement, all immovable properties constructed on state-owned or treasury lands by the financier will be inherited by the treasury.

### **Monitoring of the investors**

The Financer is obliged to comply with the relevant legislation during the construction to be conducted as per the Communiqué. In this respect, the Ministry along with MoTMAC is authorized to audit the financier.

### **Last Note**

According to Article 13, the Communiqué has entered into force on the publication date. Therefore all of the foregoing regulations have entered into effect and gained validity in practice as of October 8<sup>th</sup> 2016.

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