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### **DECISION**

**No. 162, dated 2.3.2016**

### **ON THE RULES, PROCEDURES AND METHODS OF PROVIDING STATE IMMOVABLE PROPERTIES IN PRIORITY AREAS FOR TOURISM DEVELOPMENT**

Pursuant to Article 100 of the Constitution and point 4, Article 35, Law No. 93/2015, "On tourism", upon the proposal of the Minister of Economic Development, Tourism, Trade and Entrepreneurship, the Council of Ministers

### **DECIDED:**

#### **I. PROVISION OF AVAILABLE STATE PROPERTIES, RIGHTS, COMPETENCIES AND DURATION**

1. Immovable state properties, in priority areas for tourism development, are made available to third parties for the development of tourism projects.
2. The availability of state immovable properties, in the priority areas for tourism development, is approved by the Council of Ministers, upon the proposal of the minister responsible for tourism.
3. The availability of state immovable properties, in the priority areas for tourism development, is made for a term of up to 99 years.
4. Procedures for making available the state immovable properties, in priority areas for tourism development, are set out in Chapter II.

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5. In the case of investors with the status “Special strategic investor”, according to the stipulations in Law No. 55/2015, “On strategic investments in the Republic of Albania”, the Council of Ministers may decide, on a case-by-case basis, and if this is required by the investor, the transfer of the right of ownership of the state immovable properties to the private investor, by conditioning the transfer with full realization of the investment. When evaluated by the Council of Ministers, the strategic investment agreement is proposed for approval by a special law in the Assembly of the Republic of Albania.

## II. PROCEDURES ON PROVIDING STATE IMMOVABLE PROPERTIES

1. State immovable properties are made available according to:

- a) “Call for application” procedure, announced by the ministry responsible for tourism;
- b) An application procedure presented by the developer.

2. “Call for Application” procedure

2.1 The “Call for Applications” procedure starts with the announcement by the ministry responsible for tourism, of the call for providing state immovable properties in priority areas for tourism development. State immovable properties, set out in the call, shall be in conformity with the policies, strategies, planning instruments and existing sectoral plans.

2.2 The announcement is published in the “Bulletin of Public Notices”.

2.3 In the notice that has been announced, the ministry responsible for tourism determines the data on the immovable property, state property, description of the area in which it is located, the development form/model, the evaluation methodology and the deadline within which the entities must submit:

### A. Legal-administrative documentation:

- a) is not in the process of bankruptcy and its capitals are not under execution process by bailiffs;
- b) is not subject to bankruptcy filing procedures and does not have a forced liquidation order or court administration order or has no agreement with creditors or any other similar procedure;
- c) is not sentenced by a final court decision for acts related to professional activity as a legal person, partner or shareholder of the company;
- ç) has met the obligations for payment of taxes, in accordance with Albanian legislation or with the applicable provisions in the country of origin;
- d) has fulfilled the obligations for the payment of social insurance contributions in accordance with Albanian legislation or with the applicable provisions in the country of origin;
- dh) requirements of letters “a”, “b” and “c” are met upon the submission of the Commercial Register extract for entity’s data, and the extract of the entity’s history, issued by the National Registration Center, and certification from the responsible institutions, for the issuance of these documents;
- e) the requirements of letters “ç” and “d” are met upon the submission of the certification issued by the tax administration, only for Albanian companies;

- ë) the foreign applicant/bidder must certify that he/she meets all the requirements listed above. If the aforementioned documents are not issued in the country of origin, then a notarial declaration in writing by the candidate/bidder is sufficient.

**B. Technical documentation:**

- a) Projects of approximate investment value in the field of tourism, realized and successfully completed or similar experiences, with approximate investment value with projects in the field of tourism;
- b) The project's technical proposal, which shall contain:
  - the preliminary design;
  - the architectural project;
  - data on the tourist standard to be implemented;
  - data on infrastructure quality and investment values;
  - the technical and engineering plan of the area, in accordance with the standards used for construction and urban planning;
  - implementation plan, operational plan and methods for operation and maintenance of investment;
  - chart, phases and terms for the realization of the investment.

**C) Financial documentation:**

- a) certified copies of balance sheets of the last 3 years submitted to the relevant authorities, and financial audit reports, certified by a licensed auditing entity;
- b) copies of annual turnover statements;
- c) A Bank Guarantee, at a minimum of 1%, for the necessary financial capital for conducting the investment;
- ç) The Business plan, which shall contain, at least, the following documentation:
  - capital expenditures for the realization of the investment;
  - expenses for operational costs and revenues;
  - use fee;
  - the application guarantee, at 2% of the investment, as a protective measure for the institution in the case of withdrawal, unilaterally, by the applicant.

**Ç) Documentation related to environmental impact:**

- a) Environmental impact of the investment development and proposed improvements

**D) Documentation related to social impact:**

- a) Number of employees;
- b) Program for social responsibility;
- c) Training of employees and transfer of knowledge;
- ç) Connections with local economy.

2.4 In addition to the above criteria, the ministry responsible for tourism may also establish other criteria for selecting the applicant to whom the immovable property will be made available in the priority areas for tourism development.

### 3. Organization of the “call for applications” procedure

3.1 The Minister responsible for tourism, following the announcement of the call for applications, issues an order for determining the members of the Commission for the Evaluation of Applications, hereinafter “the Commission”.

3.2 The Commission shall consist of not less than 5 persons, specialists of the relevant area, at the ministry responsible for tourism and, where appropriate, representatives of ministries or other institutions deemed to be related to the application. The Commission is responsible for examining applications. In any case, the number of members should be odd.

3.3 Persons who have a conflict of interest with the applicant cannot participate in this Commission, in the sense of the Law “On the conflict of interest”. The members of the Commission are obliged to maintain the confidentiality of the content of the applications.

3.4 Applications must be submitted manually, at the address specified in the competitive procedure documents, within the specified timeframe. Any applications made after the deadline set in the call of the ministry responsible for tourism shall not be considered by the Commission and it shall be returned to the applicant unopened.

3.5 Applications shall be submitted in two envelopes, one of which should be “Original” and the other “Copy”.

3.6 Envelopes shall be presented according to the specifications made in the call for publication. The envelopes must be sealed with the seal of the applicant.

3.7 The opening and evaluation of applications by the Commission shall be made as follows:

- a) The Commission shall read the applications in the presence of the applicants, according to the determinations made in this decision;
- b) The Commission shall read the name and address of the applicant and shall open the relevant envelope. The administrative-legal, technical and financial qualification documents are read aloud in the presence of applicants. Then, the technical and financial documentation is opened.  
The Commission communicates to the representatives the day, place and time for the final classification of applications and then continues to work on the review of applications;
- c) Based on the applications received, the Commission drafts the final ranking. The term for the Commission’s evaluation is up to 30 (thirty) days. In special cases, upon a reasoned request from the Commission, the minister responsible for tourism may change this term;
- ç) If more than one application has the same number of points, then the winner will be determined by lot in the presence of the applicants;
- d) Within 10 (ten) days from the end of the evaluation, the Commission prepares the summary report and proposes the winner to the head of the ministry responsible for tourism;
- dh) The report contains:
  - i) the scope of application;
  - ii) a summary of the procedure followed;

- iii) the number of applications submitted and a summary of each application;
- iv) the ranking of applicants, according to the Commission's evaluation;
- v) complaints, if any.

3.8 Each applicant may request an administrative review of the process when it considers that a decision of the ministry responsible for tourism is taken in contradiction with the applicable legal and sub legal acts, acting as follows hereunder:

- a) The complaint shall be submitted in writing to the Ministry responsible for tourism within 7 (seven) working days, from the date when the complainant is informed of the non-acceptance of the application;
- b) Upon receipt of the written complaint, the Ministry responsible for tourism suspends the continuation of the procedure until the complaint has been fully reviewed, including the issuance of a decision before the expiry of the time limit;
- c) The complaint to the responsible institution shall be made by the applicant, indicating his/her name and address, the reference to the specific procedure, the legal basis and description of the violation, the claim for the final decision and the relevant documentation, and the decision of the ministry responsible for tourism. The aforementioned elements are indispensable for the examination of the complaint.

3.9 The Ministry responsible for tourism shall review the complaint and take a reasoned decision within 7 (seven) days of receipt of the complaint, which shall be notified to the complainant not later than on the following working day.

3.10 Against the decision of the ministry responsible for tourism, the complainant has the right to file a lawsuit for the examination of the administrative dispute at the competent court within 30 (thirty) days from the receipt of the complaint. The examination of this appeal at the court does not suspend the continuation of the proceedings.

3.11 After the approval of the summary report by the head of the ministry responsible for tourism, as provided in this decision and after the Council of Ministers has approved the proposal of the minister responsible for tourism for the conclusion of the contract and its main terms with the selected applicant entity, the successful applicant is notified in writing of the receipt of the application and the conclusion of the contract. This notice is published in the "Bulletin of Public Notices,,,

3.12 Failure of approval by the Council of Ministers makes the call for application unsuccessful.

3.13 The notice must contain:

- a) The name and address of the successful applicant;
  - b) The duration of the contract;
  - c) Names of other applicants;
  - ç) The names of the disqualified applicants and the reasons for the disqualification;
  - d) Information on the existence of complaints;
  - dh) The requirement for the contract to be signed, provided that its security was made to the extent of 10% of the investment.
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3.14 Before signing the contract, the successful applicant shall make the contract's security, at the rate of 10%, as a guarantee to the institution in cases of breach of contract by him/her. The guarantee is returned after the completion of each investment phase, but no more than three instalments, according to the investment phases.

4. The application procedure, submitted by the developer.

For the application procedure, the applicant is subject to the procedure, as follows hereunder:

4.1 The developer shall apply at the responsible ministry, submitting his/her application;

4.2. The Ministry responsible for tourism makes a preliminary assessment if:

- a) The objectives of the project are adapted to the sectoral or regional plans or strategies;
- b) There are no limits to the implementation of the project;
- c) The project may be implemented as planned, using the proposed solutions;
- ç) The project has economic sustainability and financial adaptability;
- d) The project ensures the acceleration of tourism development.

4.3 In the preliminary assessment, the ministry may, if it considers it necessary, call, in addition to specialists of the area, the ministry responsible for tourism and representatives of ministries or other institutions deemed to be related to the application.

4.4 After making the preliminary assessment and if the application is deemed to be admissible, the ministry responsible for tourism asks the applicant to submit all the documentation required in point 2.3 of the "Call for Applications" procedure within a specified deadline.

4.5 Upon completion of the relevant documentation by the applicant, the evaluation of the application is made by a commission, set up by the Minister's order. The order determines the application's evaluation methodology.

4.6 If the application's assessment results to be acceptable, the ministry responsible for tourism proposes to the Council of Ministers the approval of providing state property, and the main terms of the contract to be entered with the developer.

4.7 Failure of approval by the Council of Ministers makes the application unsuccessful.

4.8 Prior to signing the contract, the successful applicant shall make the contract security in the rate of 10%, as a guarantee for the institution in cases of breach of contract by him/her. The guarantee is returned after the completion of each investment phase, but no more than three instalments, according to the investment phases.

### III. FEES FOR PROVIDING STATE IMMOVABLE PROPERTIES

State immovable properties, in the priority areas for tourism development, are given for use, according to the fees determined in the legal framework in force, as per the property type.

### IV. CONTRACTS WITH THE SYMBOLIC FEE OF 1 EURO

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1. State immovable properties, 50,000,000 (fifty million) Euros, may be awarded to third parties with Use/Commodatum Contracts, with a symbolic fee of 1 (one) euro, by decision of the Council of Ministers on a case-by-case basis.
2. The Minister responsible for tourism proposes to the Council of Ministers to approve the contract of use, with the symbolic price of 1 (one) euro. The proposal is accompanied by a negotiated draft-contract between the parties.
3. Before signing the contract, including the terms of the use of the immovable property, with a fee of 1 euro, the investor is obliged to pay the contract security guarantee, at the rate of 10% of the investment value. The guarantee is returned after the completion of each investment phase, but no more than three instalments, according to the investment phases.
4. In contracts with a fee of EUR 1, sanctions are imposed on cases where the investor fails to fulfil its terms. For failure to realize the investment at the end of the relevant phase, it is penalized by 1% of the value of the unrealized investment at that phase and, if after six months of investment it is not realized, the contract is dissolved by the state institution that has entered it, receiving as a fine, the amount of the guarantee deposited in that period.

#### V. ENTERING AND MONITORING CONTRACTS

1. The contract to be signed for the use of state immovable properties in the priority areas for tourism development with the investing entity shall be drawn up in accordance with the decision of the Council of Ministers, "On procedures and forms of agreements with investors".
2. The contract to be signed shall include:
  - a) the nature and scope of the works to be carried out and the services to be provided by the ministry responsible for tourism;
  - b) duration of the contract;
  - c) the value of the project;
  - ç) the assistance that may be provided by the ministry responsible for tourism for obtaining necessary licenses and permits;
  - d) the ownership of project assets and the obligations of the parties, as appropriate, to make available the site of the project and any other possible facilities;
  - dh) fees or payments for the use of property;
  - e) procedures for the review and approval of engineering projects, construction plans and specifications by the ministry responsible for tourism, and procedures for testing and final control, approval and acceptance of the infrastructure vehicle, rules and standards on the basis of which

the projects, which should be in line with the best practices with a view to developing the market through risk sharing, have been designed;

- ë) the extent of the developer's obligations, as appropriate, to ensure the change of service, to meet the requirements of time, its continuity and the provision, in substantially the same conditions for all users, mechanisms to address the potential costs for them;
- f) the right of the ministry responsible for tourism or another public authority to monitor the work to be carried out and the services to be provided, the conditions and the extent to which the ministry responsible for tourism may order changes to the work and conditions of service. The right of the ministry responsible for tourism to take other reasonable measures to ensure that the infrastructure is properly operated and services are provided in accordance with applicable legal and contractual requirements, and the right to monitor the mechanisms and handling of the possible expenditures for them;
- g) developers' obligations to give the contracting authority or another public authority, as appropriate, reports and other information about the activity;
- gj) any restriction or condition applicable to the transfer of the developer's rights and obligations according to the contract;
- h) any restriction or condition for the transfer of a developer's controlling interest;
- i) definition and consequence of force majeure, amendment to the law and other amendments in certain circumstances (including any rights of the parties to seek compensation or review of the contract);
- j) possible obligations, if any, of the relevant public authorities or ministry responsible for tourism;
- k) any right of the ministry responsible for tourism to review and approve the main contracts to be entered by the developer, in particular with the shareholders of the developer or other legal persons where the developer is a participant or vice versa;
- l) the guarantees to be fulfilled and the insurance policies to be followed by the developer for contract implementation;
- ll) the procedures for regulating a breach of contract made by one of the parties;
- m) conditions and procedures for amending and/or terminating the contract; the rights and obligations of the parties, with the expiry of the term or the termination of the contract (including the mechanism of transfer of property, technology, compensation, training and support service to be provided by the developer);
- n) applicable law and mechanisms for the settlement of disputes that may arise between the ministry responsible for tourism and developers;
- nj) the rights and obligations of the parties for confidential information.

3. Monitoring is made by the ministry responsible for tourism.

4. The monitoring unit carries out the following tasks:

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- a) After signing the contract of use, it submits, with the minutes, to the investor, the object described in the contract, according to the respective plan. The minutes clearly describes the physical condition of the property, the accounting value of the object that is given for use, according to the financial accounts at the end of the previous year and is accompanied by photographic images of the moment;
- b) When the term of the contract expires or when the contract is terminated before the deadline, it takes over, with the minutes, the object that it has in administration;
- c) Follows up, in compliance with the terms of Use/Commodatum Contracts and, every six months, drafts verification acts with investment entities;
- ç) Establishes and maintains the register of state immovable properties for use by third parties, in the priority areas for tourism development and data on income from its use. For any change in giving for use or release from these rights, step-by-step, this unit makes changes to the register set up;
- d) Develops a detailed report every 6 months for the performance of the use contracts, confirmed, regarding settlements, from the treasury branches of the respective district, the respective report for the fulfilment of the monthly usage obligations of the other indicators of the contract and submits it to the minister responsible for tourism.

5. For contracts of use, the contracts' monitoring unit has the right to propose to the minister responsible for tourism who decides on them, interventions or penalties, according to the contract with the investor, in cases when irregularities are observed in the implementation of the contract.

#### VI. DISTRIBUTION OF REVENUES

The revenues generated by the use contracts, regulated by this decision, shall be settled 100% in the state budget.

#### VII. FINAL PROVISIONS

1. The Ministry of Economic Development, Tourism, Trade and Entrepreneurship, upon agreement with the developer, may change the terms of the contracts entered, regarding state immovable properties, in the priority areas for tourism development, for which complex development/construction permits were given.

2. The Ministry of Economic Development, Tourism, Trade and Entrepreneurship is in charge for the implementation of this decision.

This decision shall enter into force after its publication in the Official Journal.

PRIME MINISTER  
**Edi Rama**

