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MARINA INDUSTRY

IN TURKISH LAW

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INTRODUCTION

Türkiye's marina business has risen dramatically since 2000. Yacht tourism, which accounts for a large portion of Türkiye's gross national product in the tourism industry, outspends several other tourism industries in terms of per capita expenditure. Meanwhile, marina investments in Türkiye have increased significantly in recent years. According to Ministry of Transport and Infrastructure statistics, Türkiye has a mooring capacity of 18,261 at sea and 6,467 on land with its 61 marinas. These capacities are predicted to expand by roughly 40% as a result of the construction of 21 new marinas.

Along with these sectoral developments, the legislation governing marinas is being updated to meet practical needs. However, because marinas are tied to numerous areas of law due to their unique situations, there may be some uncertainty about which legislation is applicable to marinas and how these rules should be enforced.

This paper provides a summary of the technical and complex legal laws governing marinas gleaned after an in-depth examination. This memorandum will be divided into three volumes, as listed below:

I. Marinas: Legal Framework
II. Marinas: Sea Areas
III. Marinas: Commercial Areas

We hope that this memorandum, developed in collaboration with our experienced lawyers, will help marina investors and operators understand key problems.

If you have any queries about the topics covered in this memorandum or any other related issues, you can contact us via the e-mail address below.

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VOLUME - I

MARINAS: LEGAL FRAMEWORK

Coastal areas are under the authority and disposal of the State as per Article 43 of the Constitution. The Coastal Law No. 3621 reiterates that the coasts and reclamation grounds are under the authority and disposal of the State and provides that everyone can benefit from these areas equally and freely.

Certain constructions defined under the Coastal Law and the Regulation on the Implementation of the Coastal Law, on the other hand, can be built on coastal areas and reclamation grounds with the proper licenses. Marinas are among the most significant of these constructions. Marinas, also known as yacht harbours in the legislation, and support units, which are an integral part of marinas, are defined as follows in Article 4 of the Regulation on the Implementation of the Coastal Law:

> "*Yacht Harbour: Coastal structures that provide safe mooring for yachts, the ability to direct walking to any yacht, technical and social infrastructure, management, support, accommodation, maintenance, and repair services to yachts, have sufficient depth of water, are protected from wind and sea effects, and have an operation permit and tourism operation certificate.*"
>
> *"Support Units: Telecommunication center, meteorology service, health unit, rental and customs service units, heliport, food and beverage and sales units."*

A similar definition can also be found in the Maritime Tourism Regulation, which was prepared in accordance with the Law for the Encouragement of Tourism No. 2634:

> "*Yacht Harbours; ... maritime tourism facilities that have piers where yachts can be moored and yachtsmen can leave their yachts on foot, social facilities such as resting, accommodation and shopping, and units that provide maintenance, repair, lifting and technical services to yachts.*"

As marinas are exceptionally permitted structures on the coasts, their construction processes are subject to detailed regulations. Under this section: (1) the procedures and rules regarding planning and construction will be summarized, then (2) the basic principles governing the relationship with the General Directorate of National Real Estate will be examined and finally (3) the incentives provided by the State for marinas will be explained.

1. MARINA PLANNING AND CONSTRUCTION PROCEDURES

The basic principles of how the coastal areas could be put into use, marinas could be constructed on these areas or the existing marinas could be expanded/developed are determined in the Law for the Encouragement of Tourism and the Coastal Law. Detailed regulations on planning and construction are included in various secondary legislation, especially the Communiqué on the Planning and Implementation Process on Coastal Structures and Facilities and the Regulation on the Administration of Public Immovable Properties. The planning and construction procedures are carried out in the following principal stages in accordance with all this legislation:

1.1. Construction Projects and Procedures Concerning Zoning Plans

As a rule, the Ministry of Environment, Urbanization, and Climate Change has planning responsibility over investments in coastal areas. The Ministry of Culture and Tourism has planning control over areas designated as Culture and Tourism Conservation and Development Regions and Tourism Centers due to their importance in terms of tourism movements and activities. In this regard, the investor first applies to the authorized ministry on the area where the marina investment will be made, by submitting an investment file. The investment file consists of a comprehensive documentation, including technical feasibility report, modeling report, hydrographic and oceanographic reports, and all kind of detailed information besides the investment to be made. These reports are not requested for investments that do not constitute an essential change to be made on existing marinas, which allows the application procedures to be concluded more quickly.

The unique position of the marinas shows itself during the investment process as well. As the coasts concern the duties and jurisdiction of many public institutions such as the General Staff, the Ministry of Transport and Infrastructure, the Ministry of Environment, Urbanization and Climate Change, or their affiliated directorates, the positive opinion of all relevant institutions must be obtained in order to finalize the process including the Environmental Impact Assessment.

These institutions are required to submit their opinions within 45 (forty five) days as a rule, but in practice, these periods may considerably be extended. In order to make this procedure more efficient, it could be appropriate to amend current Turkish legislation by adopting a system similar to the Round Table System, which enabled many new marina investments as in the case of Italy in a short period of time. Such a system would bring together the investor and the authorized public institutions and allow the investor to explain its project, therefore, shorten the bureaucratic procedure.

On the other hand, since the State is the beneficiary of the relevant area, the processes of issuing preliminary permits at the investment stage will be followed by the General Directorate of National Property. In this respect, the General Directorate of National Property will carry out a valuation and as a result, a preliminary permit agreement will be executed. During the period of the preliminary permit agreement which will be prepared for a period of 1 (one) year at first and would last for a maximum of 4 (four) years with extensions, the approval of the projects and the zoning plan must be completed. In addition, with the amendment made in 2021, the Ministry of Culture and Tourism has been authorized to allocate property to investors for the purpose of building marinas in culture and tourism conservation and development regions and tourism centers. After the positive opinions of the relevant institutions and the approval of Ministry of Culture Tourism's are obtained, the zoning plan will be announced by the relevant municipalities and the plans and projects will be finalized as a result of the evaluation of objections, if any. At this stage, it is also be possible that person/s whose interests are affected may file a lawsuit before the administrative court against the relevant zoning plan. Although filing such a lawsuit shall not stop the process per se, it would not be possible to carry out their activities based on the disputed plan if the court grants a stay of execution.

1.2. Post Project and Plan Procedures

Upon approval of the zoning plan, the marina investor must finalize the following procedures:

(i) Construction permit must be obtained before starting the construction, and after its completion, occupancy permit must be obtained from the municipality.
(ii) A utilization permit agreement must be executed with the General Directorate of National Property for coastal, fill and sea areas, and an easement agreement for parcels in the private ownership of the treasury.
(iii) Tourism Investment Certificate must be obtained from the Ministry of Culture and Tourism, and after the completion of the investment, Tourism Operation Certificate must be obtained.
(iv) Coastal Facilities Operation Permit shall be obtained from the Ministry of Transport and Infrastructure.

1.3. Main Rules Regarding Construction in Marinas

Since marinas are structures with special purposes located in coastal areas and reclamation grounds, certain specific rules regarding their construction have been introduced under the law and regulations.

In this regard, we can list the basic principles as follows:

(i) First of all, not all kinds of structures can be built in marinas. While it is not possible to have residential buildings in marinas, accommodation facilities or food and beverage units can be built.
(ii) The Floor Area Ratio ("FAR"), which is also referred to as the precedent right, expresses the ratio of the sum of all floor areas of a building to the total area of the relevant property. In other words, FAR is the value that expresses how much of the zoning plot area can be used for buildings. There is no restrictive rule regarding FAR in marinas. That is to say, FAR value will be determined in the relevant zoning plan.
(iii) Although there are no binding rules in the legislation regarding density and height, it should be noted that the general principles of zoning law shall apply in this regard. Therefore, the zoning plans regarding the marina must be in accordance with the upper scale regional zoning plan and the environmental plan. These limitations must also be determined by considering the principles of urbanism, planning and public interest. In practice, dense and high construction is not allowed in the marinas, and FAR is generally determined as 0.2 and the height is determined as not exceeding 2 floors or 9.80 meters.
(iv) On the other hand, legislation provides specific restrictions on accommodation facilities within the marinas. Accordingly, the height of the accommodation facilities cannot exceed 6.50 meters (2 floors), their FAR cannot exceed 20% of the total FAR, and their bed capacity cannot exceed 20% of the mooring capacity.

Furthermore, all marinas must have certain infrastructure and superstructure qualifications such as pier, dock, waste disposal system, water and electricity pedestals, safe and controlled entry system, food, beverage, shower, toilet and resting places, enabling the facility to perform the marina function. In addition to these minimum qualifications, according to the quality and number of other structures in the marina, marinas are classified as having three, four or five anchors. These qualities are listed below:

(i) **Three Anchor Marinas:** Marinas which provide at least one food and beverage unit, shower and toilet arrangements, laundry and dishwashing places, safety and material warehouses for marine vehicles, a parking lot or parking service for at least 10% of the mooring capacity at sea are classified as three anchor.

(ii) **Four Anchor Marinas:** In addition to the requirements for three anchor yacht ports, marinas which provide an additional food and beverage unit, dry cleaning unit or the provision of this service by the facility, at least one of the outdoor sports activities such as mini golf, tennis, basketball, volleyball courts or similar outdoor sports activities (not required if there is an accommodation facility containing such a unit), swimming pool or beach location (not required if there is an accommodation facility containing such a unit) are classified as four anchor.

(iii) **Five Anchor Marinas:** In addition to the requirements for four anchor yacht ports, marinas which provide a heliport (not required if this service is provided from the parcels adjacent to the facility), first aid unit, at least one of open or closed exhibition, concert or entertainment places, gymnastics hall, at least one of the units such as Turkish bath, steam bath, snow room, salt room, salty steam room, hot stone room, sauna with alarm system, massage units, skin care units (not required if there is an accommodation facility containing such a unit within the facility), yacht dry dock area and crane systems, maintenance and repair service units are classified as five anchor.

This classification envisaged in Turkish legislation does not provide any legal advantage to the marinas. While it constitutes a prestige indicator at national level, the Gold Anchor rating given by the UK-based The Yacht Harbor Association is a more significant international advertising tool for the marinas at the international level.

2. DIRECTORATE GENERAL OF NATIONAL PROPERTY

The relation of the marina operator with the Directorate General of National Property, the authority giving the right to use the area on which the marina is located, is essentially based on a utilization permit or easement right agreement. The relation between the marina operator and the General Directorate of National Property is shaped within the following framework in general:

2.1. Utilization Permit / Easement Right Agreements

As mentioned above (See Section I.1.1), in the project and planning process of the marinas, first, a preliminary permit agreement is executed with the Directorate General of National Property, then the allocation process is completed by conversion of this preliminary permit into a utilization permit or easement agreement.

These agreements mainly contain provisions on: (i) the purpose of use of the real estate, (ii) the duration of the utilization permit or the easement, (iii) the price of the utilization permit or easement, (iv) the revenue share and (v) the usage principles of the real estate. In this context:

(i) Real estates subject to utilization permit or easement cannot be used other than for their agreed purposes. Therefore, it is not possible to use a real estate that will be operated as a marina for other purposes.

(ii) Agreements are usually concluded for a period of forty-nine (49) years, which is the longest period permitted under the legislation. At the end of this period, all structures and facilities in the marina are transferred to the Treasury automatically and without any compensation.

(iii) The utilization permit or easement fee is paid in advance at the beginning of each agreement year and is subject to an increase each year in the rate of change in 12 (twelve) months moving Consumer Price Index averages.

(iv) Besides, 1% (one percent) of the total annual revenue calculated based on the income obtained from the facility built on the real estate subject to the utilization permit or easement right is paid to the Directorate General of National Property. Furthermore, in case a lease relationship is established with third parties on the real estate for which the easement right has been established or utilization permit has been given, the lessor operator shall pay 1% (one percent) of the gross rent, and the lessees shall pay %1 of the total annual revenue obtained from the operation of the facility (after deducting the rent paid to the lessor marina operator from the total revenue) to the Directorate General of National Property. In case the total annual revenue cannot be determined due to the nature of the activity carried out by the lessee in these places; lessees pay 20% (twenty percent) of the current year lease fee to the Directorate General of National Property.

As mentioned above (See Section I.1.1), following the amendment made in 2021, in culture and tourism protection and development zones and tourism centers, the counterparty of the new allocations would be the Ministry of Culture and Tourism. The Ministry of Culture and Tourism will allocate real estate to investors for the purpose of building marinas in these areas. The afore-mentioned basic principles will also be valid for the allocations to be made by the Ministry of Culture and Tourism.

2.2. Unauthorized Use and Occupancy Fee

As explained above, the coasts are under the authority and disposal of the State. As a result, if unauthorized use of the coasts is discovered, the Directorate General of National Property may seek compensation for a period not exceeding 5 (five) years from the date of decision, in accordance with Article 75 of State Tender Law No. 2886.

Occupancy fee is the compensation requested by administration due to unauthorized occupation or disposal of a real estate of the treasury by real or legal persons regardless of whether the administration suffers a loss or whether the occupant is at fault.

All kinds of criteria that may affect the value of real estate owned by the state such as its zoning status, surface area, quality, whether it benefits from infrastructure services, location, and way of use of a real estate and whether an income is generated with the unauthorized occupation are taken into consideration in determination and appraisal of occupancy fee.

In case occupancy permit holder exceeds the areas permitted to him/her, he/she may be served with a notice of occupancy fine for the alleged unauthorized use of land or sea areas other than those covered by the permit or agreement. In this case, the following actions can be taken by permit holder:

(i) **Payment:** If the permit holder does not have any objection to alleged unauthorized usage, it is preferable to pay without objecting to the notification. In case of no objection and payment in 30 days upon notification, 20% discount is legally applied on the occupancy fee, and an additional 15% discount is applied if the payment is made in at once. There is also the possibility of payment in instalments but in this case 15% is not applicable.

(ii) **Request for Correction/Objection:** A request for correction can be made within 30 (thirty) days from the date of notification. In this case, the General Directorate of National Real Estate would examine the correction request within the following 30 (thirty) days and would issue a new occupancy fee correction notice and notify it to the permit holder/marina operator within 15 (fifteen) days as from the date of decision. If a new occupancy fee correction notice would not be issued by the General Directorate of National Real Estate at the end of the review, the occupancy fee collection process would be over, and the marina operator would not be obliged to pay any fee.

(iii) **Administrative Lawsuit:** If the illegalities are not eliminated in the occupancy fee correction notice, it is possible to file a lawsuit in the administrative court within 60 (sixty) days from the notification of the administration’s decision and request the annulment of the occupancy fee on the grounds that the occupancy fee was assessed and determined in violation of the legislation. However, filing of a lawsuit would not stop the follow-up and collection of the occupancy fee.

The use of land or sea areas other than the areas within the scope of the utilization permit or easement right agreements would also constitute a breach of such agreements. Thus, uses contrary to the agreement may lead to the unilateral termination of the agreement by the administration.

3. INCENTIVES PROVIDED TO MARINAS

As stated above (See Section I.1.2), one of the conditions for operating a marina is to obtain a tourism operation certificate. Businesses with tourism operation certificate can benefit from several incentives, supports and advantages such as property tax exemption, building construction fee exemption, exemption from business license and distance requirement for the sale of alcoholic beverages. Some of the exemptions are explained below:

3.1. Property Tax Exemption

According to Article 5/b titled "Temporary Exemptions" of the Real Estate Tax Law No. 1319, buildings with a tourism operation certificate can benefit from a 5-year temporary property tax exemption beginning with the budget year following the year the tourism operation certificate is obtained after completion of construction.

3.2. Building Construction Fee Exemption

Buildings constructed within the scope of an Investment Incentive Certificate, hotels, motels, and similar touristic facilities whose incentives have been decided by the Ministry of Culture and Tourism and the State Planning Organization are exempt from the building construction fee, according to Additional Article 2/d of the seventh repeated section titled "Building Construction Fee" of the Law on Municipal Revenues No. 2464.

3.3. Rights Provided for the Sales of Alcoholic Beverages

Within the framework of Article 9 of the Law on Monopoly of Alcohol and Alcoholic Beverages No. 4250, facilities with tourism certificates may obtain alcoholic beverage sales permits without the distance or the business license requirement. This exemption is available only to license holders (e.g., marina operators); therefore, tenants (e.g., restaurants) operating in marinas are required to obtain a license in order to sell alcoholic beverages.

3.4. Support Regarding Electricity, Gas and Water Fees

According to the Article 16 of the Law for the Encouragement of Tourism, *"Investments and businesses with tourism certificates pay the electricity, gas and water fees at the lowest rate of the tariffs applied to the industry and residences in that region."*

VOLUME – II

MARINAS: SEA AREAS

Marinas' primary function is to provide mooring services to yachts and cruise ships. Marinas' relationships with real or legal persons obtaining these services are governed by the rules of applicable legislation as well as the agreements negotiated by and between the parties.

1. MOORING and BOATYARD AGREEMENTS

Mooring agreements are the agreements made in order for yachts and cruise boats, to be moored for a certain period of time at the mooring areas in marinas, which are the sea areas reserved for berthing.

Boatyard agreements, on the other hand, are agreements that are generally made together with mooring agreements, for the purpose of lifting the sea vehicles ashore for a short period of time to carry out the necessary maintenance and repairs, or lifting the yacht for the long-term when the yacht is not in use.

Pursuant to Article 18 of the Marine Tourism Regulation, it is obligatory to conclude a written mooring agreement between a marine tourism facility and an owner or captain of a marine tourism vehicle regarding the vessels moored or lifted ashore at their facilities. A copy of the mooring agreement is given to owner or captain.

Terms and conditions of a mooring/boatyard agreements are not regulated by law. Thus, it is critical to clearly state in an agreement the type of the services to be provided, the regulations to be followed inside the marina, the duration of the agreement, the circumstances of termination, and so on in order to avoid future disagreements and settle disputes fairly. In practice, these requirements are specified in detail in the agreement or annexes or more commonly under marinas' internal operating instructions.

It is important to note that obtaining all documents from a vessel seeking service (e.g., mooring log license, Turkish Ports Yacht Registration Certificate (Transitlog), power of attorney, assurance of third-party liability, etc.) at the signing stage of mooring/boatyard agreements and keeping these documents up to date are critical in the event of a future dispute.

2. CONCLUDING MOORING / BOATYARD AGREEMENT IN FOREIGN CURRENCY

Determining prices in foreign currency or indexed to foreign currency are forbidden in all types of moveable and real estate rental, leasing, work and service agreements, including movable and real estate acquisition and sales, car and financial leasing between persons residing in Türkiye as per the Presidential Decree and the Communiqués (2018-32/52 and 2008-32/34) on the Protection of the Value of Turkish Currency.

The issue of whether the prices under yacht mooring agreements can be determined in foreign currency has become controversial. According to one opinion, since yacht mooring agreements should be considered as a service agreement, these agreements will be subject to foreign exchange prohibition. However, according to another opinion, since yacht mooring agreements are considered as storage agreements and it is not within the scope of the Communiques, so it can be said that the prices of these agreements can be freely determined in foreign currency.

The Communiqué provides some exemptions from the foreign exchange prohibition, so the prices within the scope of the exemptions can be determined in foreign currency. In accordance with the Communiqué these two exemptions are: (i) service agreements executed by persons who do not have citizenship with the Republic of Türkiye, or (ii) service agreements in which clients are branches, representative offices, offices, liaison offices of non-residents, and companies in which non-residents have direct or indirect ownership of fifty percent or more shares or which are jointly or individually controlled by non-residents. Therefore, in case a person or company seeking mooring service is a foreign national, or at least fifty percent of a legal person's share belongs to foreign residents, the agreement prices can be determined in a foreign currency.

3. COLLECTION OF RECEIVABLES ARISING FROM MOORING SERVICE

Some marina operators collect mooring fees in advance which reduces the collection risk for the operators. However, marina operators experience collection problems when/if fees are not collected in advance or the fees for the additional services provided during the mooring period are not paid or additional fees are incurred due to the fact that the vessel has not left the marina even though the agreement period has expired.

There are various legal possibilities to force the customer who does not pay voluntarily. The most significant method to force the customer is to apply for and obtain a provisional attachment decision from the competent court. With a provisional attachment decision, a yacht whose mooring fee has not been paid will be prohibited from sailing which may force the yacht owner to pay its debt.

In "one-ship company" structures especially encountered in foreign flag vessels raise difficulties in terms of litigation. In fact, the vessel registered in the name of a company as mentioned constitutes the sole asset of this company. In such cases, the only way for marinas to collect their receivables is to arrest the vessel before leaving Turkish territorial waters through a provisional attachment.

In case the owner of the vessel is a person residing in Türkiye, the arrest makes it easier to collect receivables as it causes the debtor/owner to pay. Legal regulation on this subject will be summarized below:

4.1. Arrest of Ships through a Provisional Attachment

Receivables arising from services rendered in yacht mooring areas *(equipment including goods, materials, stores, fuel, containers and services provided for the operation, management, protection or maintenance of the ship)* are considered as maritime receivables within the scope of paragraph (l) of article 1352 of the Turkish Commercial Code ("TCC"). Therefore, receivables arising from mooring agreements, which are described as "maritime receivables",

can also be collected through the provisional attachment of the ships along with through litigation or execution proceedings without judgment based on general provisions.

However, it should be noted that within the framework of Article 1369 of the TCC, to impose provisional attachment on a ship which a maritime claim is asserted, the ship must meet certain conditions. Accordingly, only if,

(i) the person who is the owner of the ship when the maritime receivables arise is also the owner of the ship and responsible for this debt at the time the attachment is applied, or
(ii) the person who is the lessee of the ship when the maritime receivables arise is the owner of the ship and responsible for this debt at the time the attachment is applied.

Therefore, if the party to the mooring agreement has transferred its yacht or if the yacht subject to the mooring agreement is leased, the provisional attachment cannot be applied.

In addition, to be able to request a provisional attachment, a security of SDR 10,000 (Ten Thousand Special Drawing Right) must be presented in accordance with Article 1363 of the TCC. The SDR (Special Drawing Right) is a reserved asset whose value is determined by the IMF by using a currency basket, approximately with a current value of USD 1,30.

Upon the provisional attachment decision by the court, the marina operator must request the execution of the decision from the execution office in the jurisdiction of the court or the place where the ship is located, within 3 (three) business days. With this request, execution proceedings are also usually initiated by the marina operator.

Following the request for the execution of the attachment decision, the execution office notifies the ship's captain, owner, operator or the representative of one of them that the ship has been arrested. If the ship is navigating, these persons are warned that a guarantee should be given within 10 (ten) days for the maritime receivables, otherwise the ship should be delivered to the execution office before the next navigation.

Arresting the ship in this way facilitates the collection of receivables as it causes the debtor/owner to pay its debt, thus the collection of receivables becomes easier for the Marina Operator.

4.2. Execution Proceedings without Judgment

In the event that the provisional attachment is not possible, an execution proceeding can still be initiated or a lawsuit against the debtor can be filed directly. In practice, execution proceedings without judgment are often preferred. In this case, a payment order is sent to the debtor through the execution office. The debtor may object to the payment order within 7 (seven) days from the notification or may pay the debt within this period.

If the debtor does not object to the payment order in due time, the proceedings become final. In this case, the debt can be collected by seizing the debtor's properties and selling them through the execution office.

If the debtor objects to the payment order, the proceedings would stop. To continue the proceedings, an action for the annulment of the objection should be filed against debtor. As a result of the lawsuit, the court evaluates the justification of the objection and decides whether to continue the proceedings or reject the lawsuit.

If it is decided by court to continue proceedings, the debt can be collected by seizing the debtor's properties and selling them through the execution office. In practice, many debtors prefer to make payments at this stage so that their assets are not subject to seizure and sale procedures.

VOLUME - III

MARINAS: COMMERCIAL AREAS

As defined in the Regulation on the Implementation of the Coastal Law, marinas have commercial areas in the form of support units that allow them to provide food and beverages, retail sales, maintenance and repair services. It is a common practice that these commercial areas are rented rather than operated directly by a marina operator. Under this section, the essential principles regarding the leasing of commercial areas in marinas and some practical suggestions will be given.

1. LEASE CONTRACT

Contracts regarding the leasing of commercial areas between the marina operator and third parties are subject to the provisions of the Turkish Code of Obligations No. 6098 ("TCO"). In this relation, while the lessee is basically under the obligation to pay the lease fee; the lessor is obliged to hand over the leased property on the agreed date, in a condition suitable for the intended use in the agreement, and to keep it in this condition throughout the term of the agreement. The lessee is also obliged to use the leased property carefully and to show the necessary respect to the residents and neighbors of the property where the leased property is located.

Some provisions of the TCO are mandatory and in favor of a lessee. In such a case, the parties cannot agree otherwise. On the other hand, while negotiating a lease agreement, it is of utmost importance for marina operators to include provisions that maximize the protection of their interests in matters where the law allows. The most important points to take into consideration of these agreements will be explained down below:

1.1. Revenue Share of National Real Estate

Since marinas are established on state-owned lands and immovables in the private property of the Treasury, the provisions of the occupancy permit or easement agreements to be made with the General Directorate of National Real Estate have great importance when signing lease agreements concerning these areas. Easement agreements which are signed in a standardized manner in accordance with the relevant regulations always include provisions on revenue share. According to these provisions, marina operators are required to pay an annual revenue share of 1% (one percent) of their income to the General Directorte of National Real Estate. In addition to this:

(i) In case a lease agreement is signed with third parties within the marina, the marina operator is obliged to pay a revenue share of 1% (one percent) of the gross lease fee to the General Directorate of National Real Estate.

(ii) Third party lessees are also obliged to pay the General Directorate of National Real Estate of 1% (one percent) of their revenue after deducting the lease fee paid to the marina operator from the total annual revenue obtained from their own businesses.

(iii) In case the annual operating revenues of third-party lessees cannot be determined due to the nature of their activities (base stations, ATM, liaison offices, etc.), the lessees are obliged to pay the General Directorate of National Real Estate a revenue share of 20% (twenty percent) of the current year lease fee paid to the marina operator.

Therefore, the terms of lease agreements to be signed with lessees should be crystal clear regarding these payment obligations which may be surprising especially for businesses to lease a commercial area in marinas for the first time. Because in case that the lessees fail to make the required payments on time, the marina operators are liable to make these payments to the General Directorate of National Real Estate. Therefore, it is of utmost importance that lease agreements are drafted in a way including clear and direct provisions on revenue share. Also, it is recommended to the marina operators to provide a detailed information and regular reminders to their lessees about the payments and declarations to be made to the General Directorate of National Real Estate, and if necessary, the lessees should be warned officially.

1.2. Lease in Foreign Currency

Pursuant to the Communiqué 2018-32/52 regarding the prohibition of concluding agreements in foreign currency, persons residing in Türkiye cannot determine the agreement fee and other payment obligations in a foreign currency. However, exceptionally, if a lessee is among:

(i) Persons residing in Türkiye who do not have citizenship with the Republic of Türkiye, or

(ii) Branches, rep. offices, offices, liaison offices of non-residents, and companies in which non-residents have direct or indirect ownership of fifty percent or more shares or which are jointly or individually controlled by non-residents

the lease fee and other payment obligations can be determined in a foreign currency. Accordingly, lease agreements can be concluded in a foreign currency only with foreign nationals or companies established in Türkiye, which are under the control of foreign persons or entities.

1.3. Annual Lease Fee Increase

Pursuant to the TCO, the parties' agreements regarding the lease fee increase rate for roofed workplace rents are considered valid, provided that they do not exceed the rate of change in 12 (twelve) months moving consumer price index (CPI) averages in the previous lease year.

Pursuant to Article 344/3 of the TCO, parties may request from the court to re-determine the lease fee at the end of each 5 (five)-year lease period. While determining the new lease fee, the court takes into account the rate of change in 12 (twelve) months moving CPI averages, the condition of the leased property and the comparable lease fees in nearby locations.

On the other hand, if the lease fee is determined in a foreign currency, the lease fee cannot be changed unless 5 (five) lease years have passed. If a re-determination of the lease fee is requested at the end of 5 (five) years, changes in the value of foreign currency would also be taken into account.

1.4. Security Deposit

A security deposit is requested from lessee as a guarantee for the damages that lessee or the third parties under its responsibility would cause harm to real estate, leased property, or to third parties. According to the TCO, the security to be given by lessee at roofed workplace leases cannot exceed 3 (three) months of lease fee. This rule is valid in cases where the security deposit is in the form of money or bill of exchange (cheque, bond or policy). On the other hand, in cases where a letter of bank guarantee is received from lessee, this limitation would not be applicable and a higher amount of security deposit may be obtained.

1.5. Penalty Clause in Lease Agreements

In practice, penalty clauses are often included in lease agreements. Pursuant to Article 346 of the TCO, "*No other payment obligation can be imposed on the lessee other than the lease fee and ancillary expenses. In particular, agreements regarding the payment of a penalty clause in case the lease fee is not paid on time or agreements that the subsequent lease fee shall become due are invalid.*" According to this provision, it would not possible to impose any penalty on the lessee in case of non-payment of the lease fee, even if such a clause is provided in the agreement. However, penalty conditions determined in the lease agreement can be applied regarding matters other than non-payment of the lease fee such as using the commercial unit in violation of the agreement, disturbing the neighboring commercial units, non-compliance with the opening-closing hours, making undocumented sales to bypass the contractual provisions regarding the turnover lease, occupying places beyond the borders of leased property.

1.6. Insurance of the Leased Property

In practice, many marina operators take out insurance for the whole real estate, meaning the marina facility in general. If the entire facility is insured, the insured risk belongs to the lessor. Hence, expenses of insurance covering the whole real estate, i.e. the whole marina facility, cannot be charged to the lessees.

On the other hand, the obligations and expenses related to the insurance of each independent leased commercial areas, but not the entire marina facility, can be imposed on the lessees under the lease agreements. It is especially important that the lessees have liability insurance against third parties, as there is a risk that the marina management may be held responsible for the damages that may be incurred by third parties, during the decoration of the leased area and after the start of its operations.

1.7. License and Permits:

Businesses (i.e., lessees) are required to obtain various licenses and permits from the relevant authorities before starting their operations. Although different permits and licenses may be required depending on the field of activities of each business, the main permits and licenses required are as follows:

(i) **Business License:** Regardless of their field of activity, all sanitary and non-sanitary workplaces are obliged to obtain a Business License. An application to the municipality is required to obtain this license.

(ii) **Permit for Streaming Music:** Businesses to stream music (either live of via sound systems) in their businesses are required to obtain a report from organizations authorized by the municipality after installing their sound systems. The application must be made to the municipality with this report and the permit for Live Music must be obtained.

(iii) **Certificate to Sale Tobacco Products and Serve Alcoholic Beverages:** Businesses to sell tobacco products and alcoholic beverages or hookah must apply to the authorized Directorate of Agriculture and Forestry.

Although marina operators are not legally responsible for obtaining these licenses and permits as per lease agreement, it is advised to pursue procedures of the lessees whether they have obtained their licenses in order to ensure the operation of the facilities and therefore the overall operations of the marina are in line with Turkish law and not disrupted. To ensure this, these responsibilities should be clearly stipulated under the lease agreements.

2. TERMINATION OF LEASE AGREEMENTS

2.1. Expiration of Term

Contrary to other agreements, expiration of roofed workplace lease agreements' term does not automatically cause the termination. According to Article 347/1 of the TCO, the lessee may terminate an agreement by giving a notice of termination 15 (fifteen) days before the end of the term. On the other hand, according to the same provision, the lessor marina operator cannot terminate the lease agreement on the grounds that the term has expired.

2.2. Termination of Agreement by the Lessor

Although roofed workplace lease agreements cannot be terminated by the lessor on the grounds that the term has expired, lessor has the right to terminate lease agreement due to non-payment of the lease fee and in some other cases.

2.2.1. Termination After Expiry of 10 (Ten) Extension Years

The lessor may terminate the fixed-term roofed workplace lease agreements at the end of the 10 (ten) years extension period, provided that it notifies the lessee at least 3 (three) months before the end of each extension year following such period.

2.2.2. Termination Due to Non-Payment of Lease Fee

The lessor has the right to terminate the lease agreement if the lease fee is not paid although the lessor gives the lessee 30 (thirty) days of grace period in writing to pay the unpaid lease fee. If the lessee does not pay the lease fee at the end of the specified period, the lessor may file an eviction lawsuit and request the eviction of the lessee from the court.

Alternatively, the lessor has the right to initiate an eviction proceeding directly without judgment due to non-payment of the lease fee. In this case, the lessee can be evicted through execution proceedings.

2.2.3. Termination Due to 2 (Two) Justified Notices

If the lessee has caused 2 (two) justified written notices as a result of non-payment of lease fee in one lease year, the lessor may terminate the lease agreement through a lawsuit to be filed within one month starting from the end of the lease year when the notices have been made. The payment of the lease fee within 30 (thirty) days after the first or second justified notices does not prevent the lessor to exercise this right.

2.2.4. Evacuation Commitment

If the lessee has not evacuated the leased property although it undertook to evacuate it in writing on a certain date after the hand-over of the leased property, the lessor may terminate the lease agreement. The lessor should use this right by applying for execution proceedings or by filing a lawsuit within 1 (one) month starting from the date of evacuation committed by the lessee.

A common mistake when receiving an evacuation commitment is to take the commitment along with the lease agreement, and to specify the date of commitment as same as the date of lease agreement. The evacuation commitment must be received after the date of the lease agreement. Otherwise, the commitment would be deemed null and void.

2.2.5. Termination due to Reconstruction or Renovation

Pursuant to Article 350/2 of the TCO, the lessor may terminate the lease agreement by filing a lawsuit within 1 (one) month starting from the end of the term, if it is necessary to repair, expand or change the leased property for the purposes of reconstruction or renovation, and it is impossible to use the leased property during these works.

In order to use this termination right, the works of construction, repair, expansion, etc. need to be essential and it would need to be impossible to use of the leased property. Hence, simple repairs, expansions, and replacements would not allow eviction but require the lessee to tolerate such simple works as per Article 319 of the TCO. In the event that the leased property has been evacuated for this reason, the leased property cannot be leased to another person without any justified reason, unless 3 (three) years have passed. The evicted lessee has the priority right to lease the renovated leased property, and it should use this right within 1 (one) month from the written notification of the lessor.

2.2.6. Termination due to Material Cause

Lessor or lessee may terminate the agreement at any time by complying with the legal termination notice period in case there are material causes that make the continuation of the lease relationship unbearable for itself. Extraordinary and unexpected situations that could not have been foreseen at the beginning of the agreement that make the continuation of the lease relationship unbearable according to the rule of good faith would constitute material causes.

Material causes may be social events that are not caused by either party, such as war, economic crisis, as well as reasons without any social dimension, such as the lessee's involvement in crime or the lessee's gambling in the leased property.

2.2.7. Termination due to Lessee's Bankruptcy

Pursuant to Article 332 of the TCO, in case the lessee becomes bankrupt after the handing over of the leased property, the lessor may request security for the subsequent lease fees. The lessor should give the lessee and the bankruptcy desk an appropriate period by making a written request for security. The security amount should be equal to the lease fee to be accrued until the end of the lease agreement.

3. COLLECTION OF LEASE RECEIVABLES

The most preferred method in practice for the collection of lease receivables is the eviction proceedings without judgment. If the lessee does not pay the due lease fee, the lessor may initiate an eviction proceeding without judgement, and demand the eviction of the lessee together with the payment of the lease fee. A payment order would be sent to the lessee through the execution office. The payment order would specify the period of objection to the proceedings as *7 days* and the payment period as *30 days*. If the debtor does not object to the proceedings within 7 (seven) days and does not pay the lease fee within 30 (thirty) days of payment period, the lessor may request the seizure of the lessee's assets and, at the same time, may request the eviction of the leased property from the execution court within 6 (six) months following the end of the 30 (thirty) days of payment period. If the debtor lessee objects to the proceedings within 7 (seven) days, the proceedings would stop. In this case, the lessor may request the nullification of the debtor's objection and the eviction of the lessee, by filing an "*action for annulment and eviction*" before the execution court.

CONCLUSION

Marinas are being operated with public concessions in areas under the authority and disposal of the State. For this reason, marina operators should observe the legal framework regarding various areas of administrative law. In particular, when marinas would be first constructed or be subject to substantial investment, investors need to complete very complex investment and planning processes, deal with many different public institutions, each of which is subject to its own legislation. Even if such processes are completed, various litigation processes that may adversely affect investors' plans may come to the fore.

On the other hand, marinas that have started their operations by completing the investment processes execute agreements and carry out legal transactions in their relations with their customers, which concern the intricate areas of private law, especially the law of obligations, commercial law and maritime law. The risks and uncollectible receivables arising out of these agreements negatively affect the business operations and deteriorate the financial outlook of the companies. Minimizing the impact of these risks, which are ordinary elements of commercial life, is possible, by arranging all kinds of agreements in favor of marina operators within the limits permitted by law, and in parallel, by planning and implementing a process management.

In the light of the foregoing, it is vital for the marina investors to receive expert legal support during both the investment and operation processes. In this regard, if you have any questions about the topics covered in this memorandum, please feel free to contact us.

Best Regards,

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