

## Legal Update

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**Muja Law** brings you the latest issue of the *Legal Update*.

Recently in the Official Journal No.29, dated 15.02.2024, among other, has been published the Decision of the Council of Ministers No. 59, dated 07.02.2024 “*On determining the criteria, procedures and documentation for subjects applying for the special status of ‘Investor in 4 or 5 star accommodation structure’*” (hereinafter referred to as “*the Decision*”).

The Decision establishes the criteria, procedures, and documentation necessary for entities wishing to apply for the special status of investor in a 4 or 5 star accommodation structures. Also, such Decision outlines the framework for the application review.

*Some of the most important provisions of the Decision are as follows:*

### ❖ The Decision

#### Criteria

In order to obtain the aforementioned status, in virtue of the Decision, each applicant must satisfy the following criteria:

- a. Invest in the construction of a 4 or 5 star accommodation structure which:
  - i. Is situated in priority areas designated for tourism development;
  - ii. Has an investment value of no less than €8,000,000 (*eight million euros*) for a 4-star accommodation structure and no less than €15,000,000 (*fifteen million euros*) for a 5-star accommodation structure;
- iii. Is managed by an operating entity registered as a trademark or internationally recognized "brand name" with 4 and/or 5 stars, accredited by the competent authorities of the respective countries, and maintains a valid agreement with the applicant throughout the duration of the status;
- b. The applicant shall not be under bankruptcy proceedings, nor subject to forced liquidation or administration

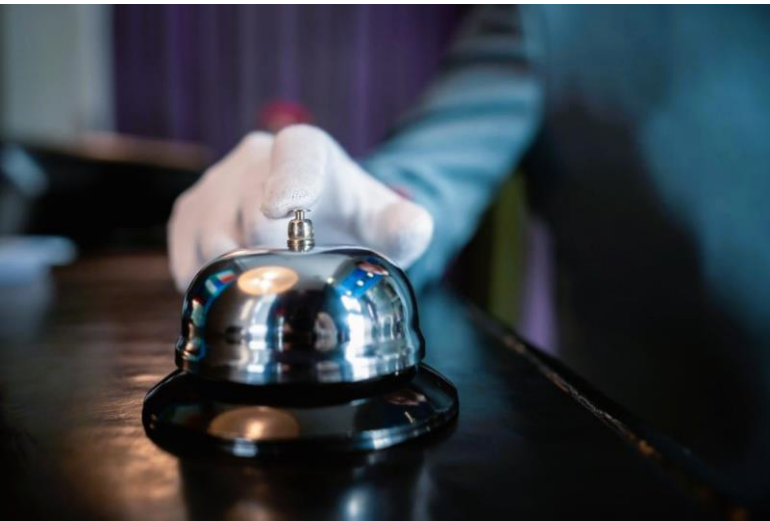
orders by the court or any similar procedures;

- c. The applicant shall not have been convicted by a final court decision for criminal offenses;
- d. The applicant shall have fulfilled tax obligations in compliance with Albanian legislation or applicable provisions in the country of origin.

If the applicant is an SPV or an "Association of Operators or Consortium," the qualification criteria shall be fulfilled by the parent company or each entity, as per the terms of the special agreement concluded.

Upon submission of the application, the applicant shall pay the application fee as specified below:

- a. 200,000 (*two hundred thousand*) ALL for acquiring the special status of investor status in a 4-star accommodation structure;
- b. 300,000 (*three hundred thousand*) ALL for acquiring the special status of investor status in a 5-star accommodation structure.



### Application and documents

In virtue of the Decision, application documents shall be submitted via the exclusive government portal "e-Albania."

Documents in a foreign language must be accompanied by a notarized Albanian translation.

The submitted documents must be original or a notarized copy thereof, with each document bearing the signature of the authorized person or persons submitting the application.

Application forms are generated through the unique government portal "e-Albania" and outline the essential data required for the application and the criteria for qualification.

Such forms include:

- a. Application form;
- b. Complaint form;
- c. Agreement insurance form;
- d. Fee payment form.

Furthermore, the Decision specifies that the applicant must submit the following documentation:

- a. Technical project concerning the accommodation structure, comprising:
  - i. Architectural project, accompanied by a cost estimate, schedule, phases, and deadlines for investment realization;
  - ii. Information regarding the tourism standards to be implemented;
  - iii. Operational plan for the accommodation structure's management and maintenance;
  - iv. Details concerning the location and property where the investment project will be executed, along with documents establishing the legal relationship between the applicant and the property, such as ownership certificates or contracts of sale, donation, exchange, lease, emphyteusis, borrowing, or similar, demonstrating the right to utilize the property for development purposes.
- b. Self-declaration of project financing means;
- c. Self-declaration of absence of bankruptcy, liquidation, or similar procedures that

- could impact the construction and/or operation of the accommodation structure;
- d. Self-declaration of absence of convictions by final court decision;
- e. Proof of application fee payment;
- f. Applicant's declaration affirming the authenticity of provided data and documents, the absence of legal impediments to conduct the activity, and acknowledgment and acceptance of criteria and obligations related to applying for the special status;
- g. Written authorization from the applicant, giving the commission, authority, or designated individuals/entities the right to conduct necessary verifications of application data;
- h. Power of attorney/authorization indicating the right of the signatories to submit the application, if not done so by the applicant. This authorization must remain valid throughout the application's validity period, from submission to the authority to drafting and signing the development agreement.

In cases involving foreign applicants, a self-declaration is not obligatory, however, proof of absence of convictions by final court decision for criminal offenses, is required.

### Application review procedure

The commission conducts a thorough review of the applications based on the qualification criteria outlined above and the accompanying documentation. Within 7 (seven) days following the application deadline, the technical secretariat undertakes the following actions:

- a. If the application and accompanying documentation fulfill all necessary requirements as per this decision, the applicants are notified of the continuation of the legal criteria verification procedure;

- b. If the application and accompanying documentation lack any necessary components as per this decision, the applicants are informed to rectify the deficiencies within 30 (thirty) days of receiving the notification.

Within 15 (fifteen) days from the notification of the continuation of the verification procedure or the deadline for rectifying deficiencies, the commission evaluates whether the applicants meet the qualification criteria.

The Decision specifies that should any insufficiencies be identified during the evaluation, the commission requests the applicant to provide the required information, stating the relevant reasons. The applicant is given 30 (thirty) days to complete this process through the unique government portal "e-Albania".



In virtue of the Decision, following the verification process, the commission prepares a summary report and the corresponding decision for each applicant, which is then forwarded to the minister responsible for tourism. The summary report shall include:

- a. Description of the procedure followed;
- b. Progress updates on the application review;
- c. Relevant documentation;

- d. Recommendation to the minister responsible for tourism regarding the acceptance or rejection of the application for status grant;
- e. Rationale for each recommendation;
- f. Any other information concerning the procedures followed during the review process.

### Proposal for granting the special status

In virtue of the Decision, the minister responsible for tourism reviews the commission's summary report and, within 15 (fifteen) days, either:

- a. Approves the initiation of procedures to propose to the Council of Ministers the granting of the special status "Investor in a 4 or 5 star accommodation structure" to the applicant;
- b. Rejects the application.

In the event of application rejection, the applicant is notified via the application rejection form within 5 (five) days, specifying the reasons for such decision.

An appeal against the commission's decision to reject the application may be filed with the minister responsible for tourism. Complaint submission and review follow the procedures and deadlines outlined in the Code of Administrative Procedures.



### Development agreement with the investor

In virtue of the Decision, upon the Council of Ministers decision on status grant taking effect, the applicant shall be notified by the contracting authority. Within 30 (thirty) days of notification, the applicant is required to sign the development agreement with the authority (hereinafter the "Agreement").

The Agreement must include the following provisions:

- a. Object of the agreement and status granted to the investor;
- b. Project value;
- c. Agreement duration and project realization deadlines;
- d. Assistance provided by the authority for obtaining necessary licenses and permits;
- e. Mutual obligations of the parties;
- f. Prohibitions on alienation of the destination during the status maintenance period;
- g. Authority or other public entity's right to monitor the construction and operation of the 4 or 5-star accommodation structure with special status;
- h. Right to postpone deadlines or terminate the agreement;
- i. Consequences of mutual obligations' non-compliance, including loss of benefits resulting from status cancellation;
- j. Applicable law, dispute resolution mechanisms, and competent court.

The Decision provides that failure by the investor to sign the agreement with the authority within the specified 30-day period results in the loss of status.

Prior to signing the agreement, the investor must secure an insurance policy, serving as a guarantee for state institutions in case of agreement violation. The insurance ceases at the conclusion of the agreement's regular duration.

In virtue of the Decision, agreement insurance shall be as follows:

- a. 4-star hotels for the value of 240,000 euros (*3% of the floor value for 4-star hotels amounting to 8 million euros*);
- b. 5-star hotels for the value of 450,000 euros (*3% of the floor value for 5-star hotels amounting to 15 million euros*).

The agreement shall be valid for ten years, commencing from the date of the accommodation structure's economic activity initiation, occurring no later than 3 (three) years from the agreement's signing date.

The Decision provides that the agreement shall be terminated immediately, in cases where the authority and/or the institutions entrusted by it to monitor the agreement find the following:

- a. Investor bankruptcy or liquidation procedure occurrence;
- b. Presentation of false data or falsified documents related to status requirements and documentation, proven at any time;
- c. Conditions under which the investor obtained status cease to exist, and the investor fails to revert to said conditions or similar conditions acceptable to the authority within 1 (one) year of notification;
- d. Investor abandonment of construction of the 4 or 5-star accommodation structure with special status or abandonment of tourist activity development within said structure, in violation of agreement stipulations.

#### Revocation of status and effects of revocation

Upon detection of any of the cases listed in this Decision, the minister responsible for tourism, based on the summary report of the commission, recommends to the Council of Ministers the cancellation of the status.



#### Transitional and final provisions

Requests submitted before the entry into force of this Decision, for which the review process has not been completed, as well as for entities that received special status before the entry into force of this Decision but have not yet concluded the agreement, are subject to the provisions of this Decision.

The online application procedure comes into effect upon the establishment of the register. Until the implementation of this procedure, the applicant shall deposit the documentation of this decision. Application submission and withdrawal of documentation as outlined in above are conducted at the ministry responsible for tourism.

Decision No. 257, dated 9.5.2018, of the Council of Ministers, titled "On determining the criteria, procedures, and documentation for entities applying for the special status of 'Investor in 4 or 5 star accommodation structure'" is hereby repealed.

#### *Entry into force*

*This Decision has entered into force after its publication in the Official Journal.*



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The office is full-service and advises clients on all areas of civil, commercial and administrative law. With significant industry expertise, we strive to provide our clients with practical business driven advice that is clear and straight to the point, constantly up to date, not only with the frequent legislative changes in Albania, but also the developments of international legal practice and domestic case law. The office delivers services to clients in major industries, banks and financial institutions, as well as to companies engaged in insurance, construction, energy and utilities, entertainment and media, mining, oil and gas, professional services, real estate, technology, telecommunications, tourism, transport, infrastructure and consumer goods. In our law office, we also like to help our clients with mediation services, as an alternative dispute resolution method to their problems.

While we have grown over the past 20 years and become recognized as one of Albania’s leading law offices, we are grounded in the essence of “who” we are and “where” we started. We understand the importance of family, hard-work, and dedication.

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