

Hotels 2022

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1. Which is the body which licenses and regulates hotels?

The Ministry of Culture and Tourism (the Ministry) is the competent governmental authority authorized to license and regulate hotels in the Republic of Turkey.

2. Under what circumstances can hotels lose their license?

Under the applicable legislation, there are two main types of licenses, namely tourism investment certificates (turizm yatırımı belgesi in Turkish) and tourism operation certificates (turizm işletmesi belgesi in Turkish). Tourism facilities, such as hotels, are required to obtain tourism investment certificates and/or tourism operation certificates from the Ministry in order to carry out tourism activities in the market as per Law No. 2634 on Encouragement of Tourism (the Law).

Article 34 of the Law provides a list of circumstances that may lead to the cancellation of such certificates by the Ministry, which may be summarized as follows:

- (a) Failure to submit the requisite documents to notify the Ministry of a change in the holder of the tourism investment certificate or tourism operation certificate or a change in the operator indicated in the tourism investment certificate or tourism operation certificate within the period granted by the Ministry or failure to fulfil the requirements even if the change in the holder of the tourism investment certificate or tourism operation certificate was approved;
- (b) Failure to submit the document(s) that constitute the basis of the operation permit that are described under Communiqué No. 2019/1 on the Implementation of the Regulation on the Qualifications of Tourism Facilities (the Communiqué) within the period granted by the Ministry;
- (c) Failure to issue a partial tourism operation or tourism operation certificate due to the facility's failure (i) to submit the document(s) serving as the basis of the operation permit or (ii) to cure the incompliances identified during the inspections within the period granted by the Ministry;
- (d) Failure to fulfil the requirements stipulated under the Law in case of re-issuance of the facility's tourism certificate as a result of a change in the type, class, or capacity of the facility;
- (e) Expiry or cancellation of the document(s) serving as the basis for the operation permit obtained from the competent authority;
- (f) Determination of a material loss of qualifications upon inspections or classification works carried out;
- (g) Cancellation of the permission that constituted the basis of the usufruct right over public property, with respect to the investments and operations established over the public property;
- (h) Cease of business operations;
- (i) Engaging in operations that fall outside the scope of operation type for which the certificate has been issued; and
- (j) Requests made by the holder of the tourism investment certificate or tourism operation certificate to cancel the relevant tourism investment certificate or tourism operation certificate.
- (k) Failure to obtain a partial tourism operation certificate or tourism operation certificate due to the facility's failure to fulfil the minimum types and classes stipulated under the Law regarding construction conditions and project design in the cultural and tourism protection and development zones and tourism centers.
- (l) Failure to
 - (i) hold certificates procedures and principles of which are determined by the Ministry within the framework of certificate programs and
 - (ii) to obtain certificates within the thirty-day period to be granted by the Ministry following the implementation of the Law.
- (m) Determination of incompliances in the facilities that have been subject to administrative sanctions within the scope of the Law.

Additionally, tourism investment certificates shall be deemed cancelled if the holder fails to apply for

- (i) the issuance of a tourism operation certificate or
- (ii) an extension before expiry of the period indicated in the tourism investment certificate for becoming operational or
- (iii) failure to fulfil the obligations regarding the issuance of certificate within the given time periods.

3. How does the classification system operate?

The Regulation on the Qualifications of Tourism Facilities (the Regulation) provides details on how the classification system for hotels operates. As per the Regulation, the hotel classification system is primarily comprised of a star rating system, scaling from one-star up to five stars.

In order to determine the relevant star rating of a hotel, the Ministry will initially evaluate the hotel's overall qualifications, including its capacity, physical features, quality, and the standard of the equipment, quality of the operations and service, maintenance and hygiene, and employee trainings provided and will consequently grant a numerical score in accordance with

the scoring criteria published by the Ministry. Each of the star classes mentioned above also has their own designated numerical scores and hotels obtain a specific star class based on the star class equivalence of the numerical score granted to them.

In addition to obtaining a numerical score corresponding to a specific star class, hotels must also satisfy the minimum quality standards required for the specific star class in question. The below table offers a brief summary of the abovementioned minimum quality standards applicable to each star class:

Class	Minimum Quality Standards
One Star	-Minimum 10 rooms -Lobby consisting of reception and waiting halls -Sitting area with cold and hot beverage services
Two Stars	-Windbreaks or revolving doors in the entrance -Management room -Hair-dryer in the room -Internet access in the public area
Three Stars	-Breakfast hall -Air-conditioner in the public area -Minimum one chair/couch and a place to put the luggage/suitcase in the room -Safe-deposit in the room -Internet access in the room -Laundry and ironing services
Four Stars	-Additional management rooms -Restaurant(s) with seating opportunity covering at least 30% of the guest capacity of the hotel -Luggage/suitcase drop -Air-conditioner in the room and public area - Hotel guest amenities ^[1 p.10] such as bath robe, cleaning kits, slippers, sewing kit, notepad-pencil, etc. -Dry cleaning services -Experienced administrative staff (at least 5 years)
Five Stars	-Minimum 60 rooms -Service elevator -Minibar in the room -Sofa-set in the room -Television with international channel access in the room -Dressing mirror in the room -Room service

Finally, on

- (i) the determination of the hotel's numerical score and the specific star class and
- (ii) confirmation regarding compliance with the minimum quality standards applicable to the same star class, the hotel will qualify as part of such star class.

4. What is the definition of a hotel – and other types of property, e.g. furnished apartments also required to register as a hotel?

Under Article 19 of the Regulation, a hotel is defined as a facility, the main function of which is to respond to the accommodation needs of customers, which may also contain specific units for food and beverage, conventions, celebration events, as well as sports and entertainment. In addition to hotels, the Regulation also provides a list of other types of properties that are also regarded as accommodation facilities (i.e., resorts, boutique hotels, special accommodation facilities, motels, hostels, camping grounds and apartment hotels) and provides a definition for each type of property. These properties must also hold tourism investment certificates and/or tourism operation certificates in order to be able to operate as a tourism facility in line with the applicable legislation.

Furnished apartments rented for accommodation purposes are not regarded as hotels or accommodation facilities under the applicable legislation unless they fall within the definition of one of the accommodation facilities mentioned above.

5. Are there any specific rules governing hotel management agreements?

Under Turkish Law, there are currently no specific rules or legislation that are solely applicable to management agreements. Sector-specific legislation including the Law and the Regulation must be taken into consideration when drafting hotel management agreements. In addition, the applicable provisions from other areas of Turkish law should also be evaluated, including but not limited to the Turkish Code of Obligations No. 6098 (the Code of Obligations), the Turkish Commercial Code No. 6102, and the Labour Law No. 4857, depending on the nature of the contractual items regulated under hotel management agreements.

6. Are hotels required to have special licenses for particular activities, e.g. having a bar, nightclub, restaurant or proving live entertainment?

In addition to hotel licenses, hotels must also hold license for particular activities that require a separate license under the applicable legislation. For instance, hotels intending to sell alcoholic beverages must obtain the respective license from the Ministry of Agriculture and Forestry separately. That being said, hotels do not need to obtain any further license to operate a bar, nightclub, or restaurant within the hotel complex if such operations are already covered by the respective hotel license.

7. Are hotels required to check and provide visitor identity information to the authorities?

Yes. Hotels are required to keep the identity information and records regarding the arrival and departure dates of customers and must share this information with the competent governmental authorities upon their request.

8. Is there a specific law governing timeshare activities and selling?

Yes. Timeshare activities are governed under the Regulation, the Consumer Protection Law No. 6502 and the Regulation on Timeshare and Long-Term Vacation Service Agreements.

9. Is there a specific law governing mixed communities with both residential tenants and/or owners and hotel residents?

Yes. The Regulation includes specific provisions applicable to mixed communities. Additionally, Law No. 364 about Condominium is also applicable to the mix use projects.

10. Are hotels able to dispose of luggage left by guests without taking specific legal steps?

No. The primary legislation that should be taken into account is the Turkish Civil Code No. 4721 (the Civil Code), which governs lost and mislaid objects (such as luggage left by guests at the hotel). Under the Civil Code, the finder of a lost or misplaced object has the duty to inform the owner of such object. If it is not possible to detect the identity of the owner of the lost or misplaced property, the finder will then be obliged to report the situation to law-enforcement officers or conduct the necessary investigation to identify the owner of the respective object and, if necessary, make announcements with respect to the lost item. The finder is also required to carefully preserve the object. It is permissible to sell the lost or misplaced objects only if one of the following conditions is satisfied:

- -Preservation of the objects leads to excessive expenditures;
- The object is quickly perishable; or
- The object has been stored for more than one year by law-enforcement officers or public authorities.

Disposing of lost property without taking the specific legal measures mentioned above may result in a penalty as per Article 160 of the Turkish Penal Code No. 5237 (the Penal Code). Accordingly, an individual who disposes of lost property will following a complaint, be jailed for up one year or fined.

11. What legal steps can a hotel take if guests refuse to leave?

The applicable legislation does not specifically mention the legal steps that need to be followed if guests refuse to leave the hotel. Therefore, the general principles of Turkish Law, including but not limited to the general principles of the Code of Obligations and the Penal Code, shall be applicable.

In this respect, in case of resistance from guests, hotel management may force the respective guests to leave with the help of law-enforcement officers. The respective guests' refusal to leave the hotel premise may also give rise to civil liability due to their failure to comply with the terms of contract between the hotel and themselves, as well as criminal liability due to commencement of the crime of unlawful occupation described under the Penal Code.

12. Can hotels refuse guests from staying in the hotel?

Yes. An agreement between the hotel's management and the prospective guests is formed upon the acceptance of the hotel. Therefore, in light of the principle of the freedom of contract accepted under the Code of Obligations, hotel management is entitled to refuse to enter into an agreement with a potential guest and thus refusing to provide accommodation services to such potential guest. Please be advised that a hotel's refusal should not lead to the interpretation that the refusal violates the rule of prohibition on discrimination, which is set forth under Article 122 of the Penal Code. The hotel may also be subject to administrative fines if it refuses to accommodate a prospective guests if it already undertook to provide such accommodation.

13. Is it mandatory for hotels to allow service animals to stay?

Under the applicable legislation, guests are not allowed to bring animals to a hotel without the hotel's explicit consent. The applicable legislation does not particularly mention whether it is mandatory for hotels to allow service animals to stay. Therefore, due to the lack of specific rules applicable to service animals, we believe that the same principle will apply to service animals and the hotel's explicit consent would be required to allow service animals to stay.

14. What is the legal position on guest privacy? Can a hotel demand entry into a room in particular circumstances?

Hotels should respect the right to privacy protected under the Turkish Constitution and should also take into consideration the relevant provisions of Law No. 6698 on the Protection of Personal Data when it comes to guest privacy. The applicable legislation does not specifically address the circumstances where hotels may access hotel guests' rooms. Therefore, taking into consideration the general principles relating to the right to privacy, the provisions of the agreement between the guest and the hotel as well as the hotel's management policies, a case-by-case assessment should be made to determine the specific circumstances where entry into a room may be allowed. For instance, circumstances posing imminent danger or raising strong doubts on the existence of a criminal act might be considered examples of circumstances where entry into guests' rooms by the hotel would be allowed.

15. Does a guest become a tenant if they stay in the hotel over a specific number of days?

Although it is a controversial topic under Turkish law, as per the majority of scholarly opinion, stays lasting longer than six months in a hotel room should be construed as housing leases described under the Code of Obligations. However, the provisions of the agreement between the parties as well as the purpose of the use of the hotel room are also crucial when determining whether an extended stay at a hotel may be considered as a lease arrangement and the guest may be treated as a tenant consequently.

16. Are there specific health and safety requirements governing hotels in this jurisdiction? If so which are the main ones?

Yes, the Regulation sets out the health and safety requirements that must be implemented by hotels. Please see some examples of such requirements below:

- - Preparing an action plan for emergency situations, providing the appropriate training to the staff, and informing guests with respect to the actions to be taken in case of an emergency;
- Implementing the necessary measures in case of malfunctions;
- Carrying out periodic pest control; and
- Informing the respective authorities if there is a contagious disease outbreak.

Additional health and safety requirements are set out under the Labour Law No. 4857 and Law No. 6331 on Occupational Health and Safety (the Law No. 6331), which should also be taken into consideration with respect to employees.

After the emergence of Coronavirus (COVID-19), a whole range of new implementations extending the health and safety requirements for accommodation facilities have been introduced in order to minimize the spread of the outbreak. In this respect, the Ministry initially issued the Communiqué No. 2020/6 on the Controlled Normalization Process in Accommodation Facilities, which was later on followed by additional communiqués amending the Communiqué No. 2020/6 and introducing new measures to maximize health and safety during provision of tourism activities. For example, facilities with a capacity of 30 rooms and above must obtain a Safe Tourism Certificate (Güvenli Turizm Sertifikası in Turkish), confirming that the high-level health and hygiene requirements are met in their accommodation facilities. Failure to obtain such Safe Tourism Certificate by the respective facilities may result in loss of the tourism operation certificate and penal sanctions. As another example, accommodation facilities are now required to check HES codes (a personal code implemented by the Ministry of Health, enabling to detect individuals tested positive for COVID-19) of the prospective guests before accepting them to their facilities.

17. Are hotels required to collect any specific daily local taxes or levies on hotel guests?

Yes, guests are required to pay the value added tax accrued in return for the accommodation and food & beverage services provided in the hotel.

18. How easy is it for hotel guests to claim personal injury damages for becoming sick at the hotel in this jurisdiction?

According to the Regulation, hotels are under the obligation to implement the necessary measures in order to prevent any disease outbreaks or injuries within the hotel facility. Accordingly, if a guest develops an illness / personal injury during his /her stay at the hotel, on the condition that such illness suffered by the guest has arisen from the fault of the hotel and/or its employees, such guest may then claim damages from the hotel in accordance with the relevant provisions of the Code of Obligations.

19. Are there any special health and safety rules governing swimming pools and leisure facilities attached to a hotel?

Yes. The Regulation describes the qualifications that must be in place with respect to swimming pools and other leisure facilities attached to a hotel. In addition to such qualifications, specific regulations governing health and safety rules applicable to swimming pools and leisure facilities should also be taken into account in order for the hotel to operate such facilities in compliance with the applicable legislation. For example, the Regulation on the Health Principles Applicable to Swimming Pools sets out the hygienic standards, quality standards, audits, and surveillance applicable to swimming pools, and the Circular on the Standards and Measures To Be Implemented for Accommodation Facilities introduces a new set of rules that need to be adopted by hotels in order to reduce the adverse impacts of the Coronavirus (COVID-19) outbreak. Turkey Communique No. 6/2020 on the Controlled Normalisation Process in Accommodation Facilities and its amending communiques issued by the Ministry also include a new set of extended health and safety rules to protect hotel employees.

20. Are there any special laws or rules governing the collection and payment of tips to hotel staff?

No, this issue is not specifically governed under Turkish Law.

21. Are there any special industry health and safety rules designed to protect staff working in hotels?

Yes, there are some industry specific health and safety rules designed to protect the staff employed in hotels under the Regulation. In addition to those rules, the health and safety requirements set out under the Labour Law No. 4857 and Law No. 6331 should be considered.

22. Are there any minimum capital or nationality requirements for those setting up a hotel in this jurisdiction?

The applicable legislation does not provide any minimum share capital or nationality requirement that need to be satisfied to set up a hotel.

23. Do segregation rules apply – with specific services needed for male and female staff?

Yes. There are some sector-specific segregation rules that may be referred to under the applicable legislation. As per the Regulation, four-star or five-star hotels, boutique hotels, resorts, or other accommodation facilities with at least twenty guest rooms should have gender-segregated changing rooms, closets, showers, and toilets.

Firm



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Description

Since 1989, we have strived to reshape the Turkish law firm model in harmony with modern standards of professional practice while still preserving the personal attention that our clients have come to expect. Our pioneering efforts have allowed our firm to be rightfully recognized as the first “Full Service Law Firm” in Turkey.

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Our size and expertise make us one of the few truly full-service independent Turkish law firms with a global reach, either at home in the role of primary counsel or as local counsel for our foreign and domestic clients. Our firm's expertise and institutional knowledge enables us to go beyond simple lawyering and develop creative business-oriented solutions according to client needs. We accomplish this by putting clients first and becoming intimately acquainted with all aspects of their business and legal needs.

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Authors



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Education

Serkan received his LL.B. from Dokuz Eylül University School of Law in 1998 and his LL.M. in International Trade Law from the University of Essex School of Law in 2000. He is an active member in the *Association of Real Estate Investment Companies (GYODER)* and the *Center for Strategic Thinking in Real Estate (GİSP)*.

Biography

Serkan Gül is a Partner at Herguner Bilgen Ozeke and is Head of the firm's Real Estate practice group. He specialises in real estate matters and is one of the most respected names in the Turkish Real Estate sector where he is highly praised for his practical, solutions-based approach to complex transactions involving multiple stakeholders and regulatory authorities. Serkan advises clients in every aspect of real estate transactions, in both asset and share deals, from project inception to completion. He has extensive experience in real estate investment funds and trusts, sale and leaseback transactions, construction, and zoning and permitting, in deals that include residential properties, offices, shopping centres, hotels, and port facilities. He also leads the hospitality team of the firm that is experienced regarding hotel management, hotel franchise, hotel branding and licensing, technical services etc. agreements. Some of his most noteworthy work has included cross border transactions related to branding, licensing and or management of mix use hospitality projects.



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Education

Tolga received his LL.B. from Istanbul Bilgi University in 2012 and joined the Istanbul bar in 2013. He has co-authored a number of articles including "Pensions issues in cross-border acquisitions (Private Acquisitions) Q&A" published Thomson Reuters, "Employees (Private Acquisitions) Q&A" published Thomson Reuters, and "Doing Business in Turkey" published Chambers & Partners.

Biography

Tolga Ipek is an Associate in Herguner Bilgen Ozeke's Corporate and M&A, Data Protection and Employment practice groups where he plays a key role in a number of complex mergers & acquisitions and handles the daily corporate needs of many of the firm's clients. Within the scope of his daily corporate work, Tolga handles the compliance needs of the firm's corporate clients with their employment issues, data protection, and general corporate compliance with Turkish laws. He handles matters ranging from full compliance work including trainings and drafting agreements to more tailored work including advising clients on specific data protection or employment issues within a targeted sector. He also contributes to the hospitality team of the firm that is experienced regarding hotel management, hotel franchise, hotel branding and licensing, technical services etc. agreements.

Notes

1. ^{^ [p.4]} <https://tureng.com/tr/turkce-ingilizce/hotel%20guest%20amenities>