

Buying a hotel room in Spain: the “condohotels”

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Buying a hotel room in Spain: the “condohotels”

Gemma Caballé Fabra

Abstract. The “condohotel” is a type of condominium which is most commonly used in tourist buildings, such as hotels, where investors can buy a private room/unit and offer it to a hotel company, which manages the “condohotel” and offers the units to guests through an accommodation contract. According to the Spanish regions called Autonomous Communities (AC) that provide a special legal framework for “condohotels”, room owners are also permitted to use their units for specific period of time. However, residential use is prohibited. In exchange, the hotel company pays a part of its profit to those owners. This article analyses how the “condohotel” regime works in Spain and what are the main weaknesses that explain its limited success, despite the importance of the real estate and tourist sector and the popularity of the condominium regime in this country.

Keywords: condohotels, condominium, hotel, tourism, housing, property

1. Introduction

The term "condohotel" is a combination of the words "condominium" and "hotel". This concept exists in countries like France and Portugal (Van der Merwe, 2015, p. 58) and also in the United States, Australia and some countries in Latin America (Munar Bernat, 2010, p. 324). A “condohotel” is a hotel establishment which rooms or private units belong to different owners, where a hotel company is in charge of the management of the hotel and the use of the rooms is shared between their owners and those guests who sign the accommodation contract with the hotel company (Prada Álvarez, 2010, p. 339). The hotel is organized through a condominium regime, so that each of its owners, in addition to have an exclusive property right over their unit, also own the right to use the common areas. In other words, the “condohotel” consists on a tourist establishment that is concurrently owned by several owners where each of them owns a private unit that can be a room, an apartment, a bungalow or other type of private unit (González Cabrera, 2012, p. 67) which they place at the disposal of a hotel company so that it can offer the room to other guests through accommodation contracts during the periods that the owner is not using it. In exchange, the hotel company pays a part of its profit to the owners. The private unit can be registered in the Land Register.

Two of the main characteristics of "condohotels" in Spain are the principle of “single operator or management” (*principio de unidad de explotación*) and the prohibition of using the private units as a long-term residence. The principle of “single operator or management” basically dictates that only one person or a company (the hotel company) can offer the private units to guests and not the owners by themselves, despite the fact of precisely being the owners of these units. The second characteristic is that private units can only be used as tourist accommodation. Therefore, the owners are forbidden from using the unit as residence. It is the latter characteristic that currently prevents the “condohotel” from being used as a real housing alternative, since the owners are only allowed to use private units during a specific and time-limited period of time per year.

Despite being legally recognized in several of the Spanish regions called Autonomous Communities (AC), the “condohotel” is not really successful in this country. Moreover, the current regional regulations are not very complete as it usually consists only in a single article of the different regional tourism Acts which causes legal uncertainty among the parties involved in a given condominium relationship, opening the doors to abuses, especially on the part of the hotel company and there are also some legal loopholes that need to be filled in.

2. The “condohotels” in Spain

2.1. Economic and social context

Public policies in Spain have encouraged citizens to become homeowners (especially under the condominium regime) since the 1960s [2] providing a strong legal framework to this type of tenure and mortgages and tax incentives (see further Nasarre Aznar *et al.*, 2014, p. 194), which, in turn, also contributed to the progressive creation of the “housing bubble” (Nasarre Aznar *et al.*, 2014). In 2016, for example, the rate of ownership in Spain was 77.1% [3].

The progressive growth of the real estate sector in Spain made it the main engine of the Spanish economy (Pareja-Eastway *et al.*, 2014, p.34). But the economic crisis that began in 2007 led to the bursting of this “housing bubble”, leaving high unemployment rates [4] in those sectors related to real estate, over-indebtedness for households and, consequently, an increase in the number of evictions [5].

Access to housing has become more difficult since then, due to the restriction of financial and mortgage loans, a social housing shortage and the rent increases of tenancy contracts in the main Spanish cities of Spain (see further about this context in Simón Moreno *et al.*, 2016).

Nevertheless, the condominium is a very common regime to organize multi-unit buildings [6], specially since the end of the Spanish Civil War in 1939, mainly along the Mediterranean coast (Nasarre Aznar *et al.*, 2015, p. 455). These coincide with the AC where the tourism sector is more developed. In fact, in 2015 Spain ranked as the number one European Union country, in terms of the number of households living in flats, representing 66.5% of the total number of different ways of organizing dwellings, most of which are actually organized in condominiums as is shown in Figure 1 [7].

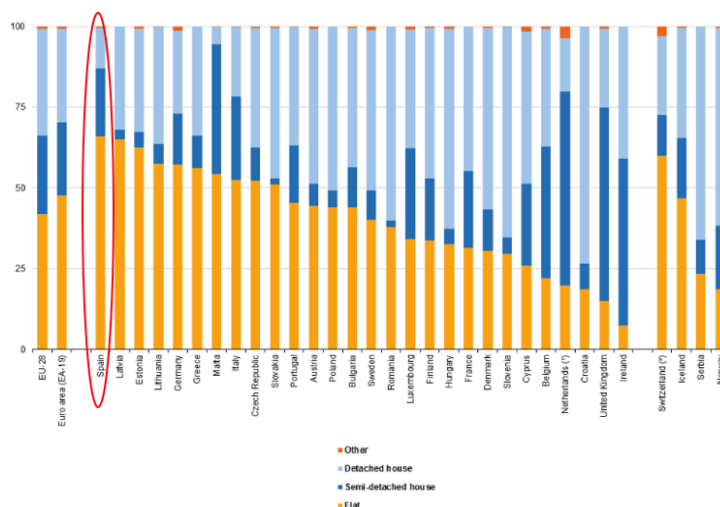


Figure 1. Distribution of population by dwelling type (2015). Source: Eurostat.

Together with the real estate sector, tourism is the other sector that also has a strong impact on the Spanish economy (Correyero Ruiz *et al.*, 2008). In fact, according to the World Tourism Organization (UNWTO), in 2016 Spain was the third tourist destination in the world ranking [8] and according to the study carried out by the World Economic Forum in 2017, Spain leads the world ranking of tourism competitiveness [9].

In Spain, the competence to regulate the tourist sector can be adopted by the governments of each 17 AC and the cities Ceuta and Melilla (art. 148.1.18 Spanish Constitution [10]). That is to say that the Spanish Government does not have competence to regulate the tourist sector in those AC that have adopted it according the Spanish Constitution. The AC where the "condohotel" is legally recognized are those where the tourist sector has a greater impact (those located along the Mediterranean coast of the Iberian Peninsula, the Canary Islands and the Balearic Islands) [11].

Taking into account that the real estate and the tourism sector are the main engines of the economy in Spain, the fact is that the “condohotel” (which can combine both sectors) has not been entirely successful, it is generally unknown among citizens or investors and real estate professionals and it is in need of a more detailed legal development.

2.2. Autonomus Communities in Spain where the “condohotel” is regulated

In Spain, the “condohotel” is today legally recognized in only one article of the tourism Acts of Andalusia (2011) [12], the Balearic Islands (2012) [13], the Canary Islands (2013) [14], the Valencian Community (2014) [15] and Catalonia (2015) [16].

Thus, the current regulation of “condohotels” in each AC is insufficient and leaves several doubts related to its practical application and configuration. Consequently, the condominium regime is applied as supplementary legislation (in Catalonia it is applied the Act 5/2006, 10 May, of the fifth book of the Civil Code of Catalonia and in the rest of Spain, the Spanish Condominium Act 49/1960, 21 July and the Spanish Civil Code). However, there are some incompatibilities between “condohotels” and the condominium regulation that will be explained below. This lack of regulation means that it is through the contracts entered into between the parties, where the conditions, clauses, and exceptions are established “ad hoc”. Consequently, each “condohotel” can establish their own rules of organization, contributing to generate legal insecurity around this regime and to the presence of abusive clauses in contracts that may jeopardize the interests of the owners of the units.

3. Legal configuration of “condohotel”

3.1. Participating parties

The "condohotel", beyond being considered a new form of tourist accommodation or a tourist product, is, in fact, a legal form of property organization that can be applied to certain tourist accommodations [17]. The word "condohotel" is not recognized in the current AC regulations neither the “condohotel” contract itself exists in any piece of legislation. It is the result of a combination of a contract of sale of the unit and the transfer of the unit to the hotel company so that the latter can manage it and offer it to guests. In the AC regulations, “condohotels” are known as “hotels organized through a condominium regime”. Owners also must pay an installment to the community to contribute to the maintenance of common areas.

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"Condohotels" involve the participation of two or three contractual parties [18]: the owner of the entire hotel (before the division of the hotel through a condominium has taken place), the hotel company (which may or may not be also the owner of the entire hotel) and the private unit or room owner/investor. The owner of the entire hotel sells the rooms or the apartments to the investors. The investors or unit owners should also subscribe a tenancy contract to rent their unit to the hotel company (Prada Alvarez, 2010, p. 350). However, many incompatibilities exist between the core characteristics of “condohotel” and the tenancy regime, as it will be outlined below.

Only the hotel company can offer the units to the guests and manage the hotel due to the principle of “the single operator or management” (*principio de unidad de explotación*) that is explained under 3.5 below. The hotel company pays each of the owners of the units a part of its profit, given that when the owner is not using the room it can be occupied by a non-proprietary guest through a traditional accommodation contract signed with the hotel company [19] (Núñez Iglesias, 2010, pp. 221 and 224).

To sum up, in “condohotels”, the buyer (the owner/investor) of the private unit must subscribe two contracts: a sales contract (with the owner of the entire hotel who sells the private units, which may or may not also be the hotel company) and another one to cede the use of the unit to the hotel company, which usually is undertaken through a tenancy contract (González Cabrera, 2012, p.77).

However, due to the incompatibilities that exist between the main characteristics of “condohotel” and the tenancy regime, other contracts that could also be arranged instead of it are the mandate contract, the service contract or the hotel agency contract or hotel management agreement (HMA), but each of them also has limitations in relation to the “condohotel” features (see further under 3.6 below).

Figure 2 shows the contractual relationship among the parties that take part under “condohotel”.

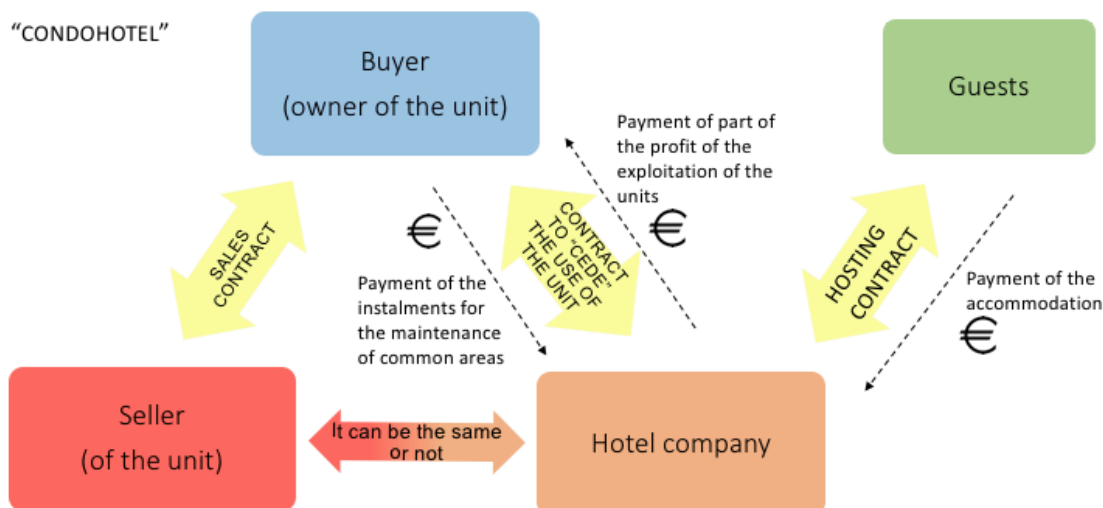


Figure 2. Contractual relationship among parties under a “condohotel”.

Source: own elaboration (2018).

The “condohotel” is a new form of tourist accommodation for the owners of the units, with different characteristics from the traditional second residences on the coast of Spain or other forms of tourist accommodation such as timesharing. But for the rest of the guests of the rooms who are not owners or investors, it is not apparent that the hotel is in fact a “condohotel”. All in all, they may not have to

know that the hotel establishment is organized as a "condohotel", as they only contract and arrange their stay with the hotel company and never directly with the owners of the accommodation units.

3.2. The profit from the exploitation of the units

The investor or the buyer of the private unit, in addition to become the owner and having the possibility to use the private unit for a specific period of time per year, she also benefits from the profit that can be a fixed amount, variable amount or a mix of both (González Cabrera, 2012, p.87) from the hotel company. Consequently, it is also a way of recovering the investment made to acquire the room or the apartment [20].

As long as the AC regulations do not stipulate anything about this profit (e.g. profit generation by the given unit or an average amount of the whole exploited units) it can be freely negotiated between units owner's and the hotel company.

When the period of time during which the owner uses the room is taken into consideration when calculating the rent or this profit, it could be possible to proportionally discount the use from the amount she will receive. This can work as an incentive to the owners to occupy their rooms as less as possible.

Overall, the main incentive for investors to buy a room in a "condohotel" regime is that they can obtain an extra income; since if the reason for buying it is only the use, there are already other forms of long-term occupation available, such as timesharing, seasonal leasing or second residences to satisfy these needs and without all the limitations of "condohotels" (such as the limited freedom to decide when to occupy the room and during what period; owners cannot freely change or make renovations in the room, etc). However, it must also be taken into account that the owners of the units in "condohotels", in addition to benefiting from the profit, they also benefit from the services or amenities of the hotel and may even have favourable conditions in comparison with non-owner guests.

3.3. The use made by the owner

Through the "condohotel", the hotel company ensures that during a period of time rooms will remain occupied by their owners and do not remain empty or under occupied in less active months such as during the winter [21]. However, they can only use the units as tourist accommodation, since residential use is not allowed according to all the regional tourist Acts. In relation to the duration of this period, it depends on the regulation of each AC. For example, in Andalusia and in Balearic Islands there is a time limit of 2 months, the Valencian Community allows a maximum of 4 months legally and the Canary Islands a maximum of 6 months. If these deadlines are exceeded, it is considered that the unit is being used for residential purposes. However, there are no consequences or sanctions stipulated.

In the Canary Islands, the type of use of the whole "condohotel" can be modified, as long as it is decided by a decision taken by all the owners and the urban planning where the hotel is located allows it (art. 30.2.a. of Act 2/2013). In the other regions, however, it is expressly established that use of the "condohotel" can never be modified; that is to say, it can only be used as a tourist accommodation.

3.4. Requirements that the tourist establishments where the “condohotel” regime is applied must fulfil

According to Prada Álvarez (Prada Álvarez, 2010, p. 339), the requirements these establishments must fulfill for the application of the “condohotel” regime are:

- a) The establishment must be divided into private units/rooms/apartments.
- b) The coexistence of private units and common areas.
- c) The existence of by-laws and hotel rules.
- d) The designation of a single company or person to manage the whole establishment. That is, the principle of the “single operator or management” (*principio de unidad de explotación*).
- e) It can only be used by the owners as tourist accommodation, not as a permanent residence.

Before the division of the hotel into a condominium, the owner of the entire hotel (which may also be the hotel company) is interested in the private rooms being kept in good condition, as well as the common areas, since the hotel has to remain attractive to the buyers or investors, given that they do not only benefit from using the room, but also from the common areas. This is why the the owner of the entire hotel may be interested in building a hotel to use it as a "condohotel" or acquiring one already built, to renovate or to restore it and apply this regime afterwards. For this reason, the "condohotel" is a potential opportunity for those hotels or tourist establishments that are not in good condition, as they could be refurbished without the need for much additional investment, thanks to the sale of the units and the installments that owners must pay.

3.5 The principle of the “single operator or management”

The principle of the “single operator or management” in “condohotels” means (Prada Álvarez, 2010, pp. 344 and 348):

- a) It can only be a single person or a company who manages the hotel and offers the units to the guests under tourist accommodation contracts and not the owners themselves.
- b) There must be a common management of both private and common areas.

According to Prada Álvarez (Prada Álvarez, 2010, pp. 347 ff.), the reason of this principle is the management improvement of the entire establishment, as well as to be clearly determined who is responsible for the business and ensuring full compliance with all the relevant rules and regulations.

In accordance with this principle, in the same tourist establishment there may be units under the "condohotel" regime and others organized as a traditional hotel owned by the hotel company. In this case, this principle is not violated, because it continues being the hotel company who manages all the private units. However, if the owners of the private units have not ceded them to the hotel company, this would indeed violate the principle, since owners would be able to offer their units to guests by themselves.

3.6. Supplementary regimes

As the regulation of “condohotels” are only provided in one short article in each AC tourist Acts, this is not enough to regulate all the complex “condohotel” regime. Therefore, the supplementary regimes are the condominium and also the rules for non-residential tenancies foreseen in Act 29/1994, of November 24th, on Urban Leases [22] which is applied in all Spain; or instead, as said, the regulation

of the mandate contract, the service contract or the hotel management agreement (HMA) because as it is outlined below, there are several incompatibilities between the core characteristics of “condohotels” and the condominium and tenancies rules.

3.6.1. *Condominium regime*

All the tourist Acts of the AC that regulate “condohotels” expressly establish that the condominium legal framework is applied to them. The condominium regime in Spain is characterized by the following notes (Lasarte, 2010, p. 216 and Del Pozo Carrascosa *et al.*, 2008, p. 209):

- a) A building divided into private and common areas.
- b) Common management of both private and common areas.
- c) Existence of two or more owners of the private units.
- d) Existence of a legal organization of each owner’s rights.
- e) Common areas cannot be divided or cordoned off; they must be freely available to all residents.
- f) The assignment of preferential acquisition rights is forbidden among owners.

Two of the main problems with applying the condominium regime in “condohotels” are:

- The current condominium regime in Spain (both the condominium regulation of Catalonia and of the rest of Spain) is conceived for a community where there are, on the one hand, the owners of the private units (i.e. the individuals) and, on the other hand, the owners’s association (i.e. the government body of the condominium) (art. 3 of Condominium Act 49/1960 and art. 553-1 of Catalan Civil Code). However, in “condohotels” there are the owners of private units, the government body and also the hotel company (that may or may not own units), where each of them has their functions, obligations and rights, but neither the current condominium regime nor the “condohotel” AC regulations provide a legal framework for them.

According to the condominium regime, only if the hotel company owns private units is entitled to participate in the decisions that affect the whole building. But if the hotel company does not own any unit, then it cannot participate in these matters, since the hotel company will not be able to undertake his assigned duties, basically, related to the maintenance of the hotel because they are only reserved for the owners of the private units or the government body itself. One possible solution for this is to compulsorily establish that the hotel company was elected by the owners, regardless it has private units owned or not and it has obligations related to the maintenance of both private units and common areas. Consequently, if the hotel company needs to be replaced, this must be decided by all owners.

- The free use of the owner in relation to its private unit (art. 3 of Condominium Act 49/1960 and arts. 553-1, 553-3, 553-36 y 553-37 of Catalan Civil Code) is limited, since there is a prohibition of residential use and neither she can offer her units to the guests by herself, owners nor can alter the unit freely, since it must fulfil the hotel standards, according to the type and category of the hotel, as well as being consistent with the design of the hotel. However, it is important to bear in mind that this may affect the ‘core’ content of property right (art. 33 Spanish Constitution). In fact, according to art. 17 of EU Charter of Fundamental Rights [23] “everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss (...)”. For that reason, “condohotels” seems to be a special type of condominium different from the general regime due to the several limitations of the owner’s property right.

3.6.2. *The cession of the units by the owners to the hotel company*

The AC tourist Acts that regulate "condohotels" establish that the private units are ceded to be managed by a single hotel company for at least 10 years. But these regulations do not contain any other provisions providing more detailed guidelines on how this cession should be carried out or under what legal framework neither through which contract. Therefore, different possibilities exist as it is highlighted below.

3.6.2.1. *Tenancy contract*

In practice, a tenancy contract (regulated by non-residential tenancies rules under Spanish Urban Leases Act 29/1994) is usually used to cede the units to the hotel company (Prada Álvarez, 2010, p. 350 and González Cabrera, 2012, p. 82). However, there are incompatibilities or incongruencies between the tenancies regime and the characteristics of "condohotels" that evidence that the tenancy regime may not be suitable to be applied directly in "condohotels". Some examples of these incompatibilities are:

- In principle, Act 29/1994 does not provide for the landlords to use the private units that they lease (art. 27.2.b Act 29/1994) as happens in "condohotels", where the owners of the units can effectively use the rented room leased for a certain period of time per year.
- If an owner of a private unit (or the tenant) unilaterally terminates the contract (in case that exists reasons or causes established in art. 27 Act 29/1994), the principle of the "single operator or management" would be breached. In this sense, in the AC regulation of "condohotels" is not established what would happen if one room's owner (the landlord) or the tenant (the hotel company) wanted to terminate the tenancy contract before the 10 years time period expires.
- While according to arts. 21 ff. Act 29/1994 landlords should undertake most of the maintenance and improvements on the rented property. However, it does not fit with "condohotel" regime because the hotel company is also responsible that the private units were in a good condition since is who offer them to the guests through the traditional accommodation contracts. For that reason, the maintenance and works in the private units should be shared between their owners and the hotel company.
- All the articles of the AC tourist Acts that regulate "condohotels" establish a 10-year minimum cession term, but art. 17 Act 29/1994 leaves the amount of years to the free will of the parties.

As it can be seen, there are so many incompatibilities that make the Acts of Urban Leases in Spain could not be easily applied directly to "condohotels". Neither seems to be adequate the general regulation of the lease contract in the Civil Code, which neither solve these issues in relation to the rights and duties of the parties (e.g. 1554 and 1561 Civil Code).

Thus, we find convenient to explain whether the service contract or the mandate contract might be more useful even the hotel management agreement (HMA).

3.6.2.2. *Other contracts to cede the private units: the service contract, the mandate contract and the hotel management agreement (HMA)*

The **service contract** (arts. 1583 and ff. of Spanish Civil Code) is by which one of the parties (in this case, the hotel company) undertakes a work or provide a service for a price paid by the other party (the private units's owners). Thanks to the broad legal framework of this contract, it can be suitable to cede the units to the hotel company, because the hotel company manages and exploits the hotel and shares a part of its profits with the owners in exchange of the contribution to the maintenance of the hotel (both common areas and private units) and the installments.

The **mandate contract** (arts. 1709 to 1739 of Spanish Civil Code and from arts. 622-21 to 622-42 of Catalan Civil Code) is a contract by which a person (the agent) attempts to perform an activity on behalf of or on account for another (the principal) (Albaladejo, 2011, p.781). Through this contract, the hotel company manages and exploits the hotel, on behalf of or on account for the private units' owners following their instructions and guidelines and also shares with them a part of its profits. The mandate contract, unlike the service contract, allows the owners of the units control the hotel activity, because they may give instructions to the hotel company of how the hotel management should be carried out. However, that could jeopardize the entire management of the hotel, since each owner may give a different instruction to the hotel company in relation to how it should manage each unit.

Two possible solutions to this, on the one hand, is that all the owners should agree on the same instructions or guidelines given to the hotel company. On the other hand, that all private units are ceded in a single mandate contract. However, in relation to the latter, private units' owners should become a corporation to achieve so as long as the government body of a condominium cannot decide upon the destiny of the private units (Van den Merwe, 2015, 125 and ff.). But in this case, the scheme will no longer be a “condohotel”, but a type of corporation or business. This option would be interesting though, for example, as an alternative for continuing the “condohotel” business in the event that the first hotel company ceases its activity and the owners want to assume the management themselves, unless they transfer it to another hotel company through a **hotel management agreement (HMA)** (see further about this contract in Martínez Cañellas, 2015, p.830). In this sense, an hotel management agreement (HMA) is a type of contract under the general legal framework of agency contract [24]. However, it can only be signed between corporations and not between the private units' owners and the hotel company (Martínez Cañellas, 2015, p.834). An agency contract is the contract by which a person (agent) attempts to promote operations of commerce on behalf of or of or on account for a corporation (art. 1 and 10 of Act 12/1992).

Therefore, a key difference between the mandate contract and the agency contract is that in mandate, the principal (the owner of the private unit) must be a natural person and is regulated under Spanish and Catalan Civil Codes, while in the agency contract or in the hotel management agreement (HMA) the principal must be a corporation (as long as it is a commercial contract) and is regulated under commercial law but, as said, it could still be used in case that owners create their own corporation to cede the units in a single contract, but in this case, the scheme will no longer be technically a condominium.

In a service contract or in a mandate contract, as in a tenancy contract, if an owner or the hotel company unilaterally terminates the contract which is given the unit, the principle of the “single operator or management” will be breached, since the unit owners will be able to use the apartment or the room freely while the other unit owners will have limitations. An alternative to termination could be that the owners replaced the hotel company with another.

4. Condohotel vs. timesharing

The "condohotel" should not be confused with timesharing (a regime that allocates turns for using a property), because despite having many similarities, these are different legal regimes that seek different goals.

Tourist timesharing in Spain is regulated in Act 4/2012 of the 6th of July [25]. Art. 23.1 of Act 4/2012 establishes that timesharing gives the holder of the turn the right to use an accommodation as well as the complementary services during a specific period of time.

Nevertheless, the turn's holder does not collect profits from the units, unlike the owner of the private unit in "condohotels".

The main similarity of timesharing with "condohotels" is that the owner of the room (in a "condohotel") and the holder of the turn (in timesharing) have the right to use an accommodation during a specific period of time and also to use the complementary services (use communal areas such as gardens, swimming pool, etc.). However, in timesharing, the holder of the turn is not the owner of the accommodation unit, as she is only the holder of the right to use the property.

If the purpose of the investment is only to use the unit without having any interest in being an owner (with all that this involves), perhaps the most suitable option for the investor would be timesharing. However, the "condohotel" offers the possibility of using the unit for a certain period of time and, in addition, obtaining a part of the profit of the hotel company.

5. Advantages of condohotels

According to Del Horno [26], the advantages of the "condohotel" regime are the following:

1. It allows the hotel company or the owner of the whole hotel (before its conversion into condominium) a flexible way of financing through the sales of the private units.
2. It allows investors to buy a tourist accommodation in sunny Spain.
3. It can be an alternative investment to second residences.
4. It can be an instrument for renovating the hotel with less investment.
5. It can improve hotel occupancy planning.
6. It can reduce dependence on external agents (travel agencies and tour operators).
7. It promotes customer loyalty (the owners) to the destination.
8. It can be an instrument against the seasonality of tourist in some regions of Spain.
9. It generates "cash flow" from the initial sale and from the maintenance costs that the owners of the units must satisfy through the installments.

Besides, the "condohotel" is attractive to financial institutions or banks because the sales of units, the installments and profit payments minimise the substantial risk of default of the owner of the hotel (before the division into a condominium), the hotel company and unit owners.

For the owners of the private units, it means an increase in their assets, as well as an improvement of their quality of life, since owning a hotel room in an attractive location, obtaining an extra income, having access to certain facilities and other typical amenities of a hotel, may be a very attractive option in comparison with the traditional second homes.

For the hotel company, it might also be interesting because periodic customers (the owners of the private units) are assured in those months when the tourist activity is lower and the costs for the maintenance of the hotel are reduced since the owners must contribute to the maintenance of the common areas, in addition to the maintenance of the private units. However, it is important to bear in mind that to guarantee the profit that the owners will receive, the activity of the hotel must be successful. Thus, “condohotels” should be located in places where there is significant tourist activity.

6. Can “condohotels” work as a residential alternative?

AC Acts which regulate “condohotels” establish that owners are prohibited from using the rooms or apartments for residential purposes. That is due to the urban planning classification of the land where the hotel is located. It is a limitation to the property right justified by the “social function of property” recognised in art. 33.2 of the Spanish Constitution. Precisely, one of the ways of guaranteeing this social function is through the urban classification of the land. Therefore, the type of use that it can be made in a land depends on what is established in the urban planning classification. If it is on residential land, it may be designated only for this type of use. Otherwise, if it is on a land destined to tourist purposes, it can only be made a tourist use (such as hotels, restaurants, etc.). For this reason, some authors have considered the possibility that “condohotels” might be used for real estate speculation from an urban planning point of view, becoming a way of reclassifying land destined to tourist purposes into residential land [27].

However, “condohoteles” can be attractive for a specific profile of investors, for example, those foreigners (or also nationals) that want to spend their holidays periodically in the same place; or for retired people who wish to spend a period of time enjoying the comforts of a hotel; or for those who are in a specific place for labour reasons during few months. They may also be interesting for investors who are not interested in the use of the room or apartment and would prefer to offer it to the hotel company and, in exchange to obtain a financial return without using the unit. It allows owners to forget about all the issues and responsibilities that leasing a second residence implies, since it is the hotel company who manages the unit and offer it to guests through the accommation hosting contracts.

7. Conclusions

Despite the fact the “condohotel” is legally recognized in the Tourism Acts of some Spanish AC, to date, this regime has not been really successful and it is not well known among real estate or tourist professionals nor amongst citizens or investors that could be interested in buying private units. The current AC regulations are not complete and the “condohotel” regime causes legal uncertainty to stakeholders, leaving for abuses by the hotel company and legal loopholes.

It is important to bear in mind that in “condohotels” intervene the owners of the private units, the government body of condominium and the hotel company, but the current condominium regime (either the condominium regulation of Catalonia or the one of the rest of Spain) only recognises the owners of the private units and government body. Therefore, this makes difficult the direct application of the condominium regulation to “condohotels”. Moreover, regarding the cession of the private units from the units’ owners to the hotel company through a tenancy contract, there are certain provisions of Urban Leases Act that do not fit into the “condohotel” features and neither from the general regime of leases of the Spanish Civil Code. Consequently, instead of the tenancy contract, the cession of the

units may also be instrumentalized through the mandate contract (the hotel company should follow the instructions and guidelines given by the owners) or the service contract (the hotel company does not need to follow instructions from the owners). The owners can also create their own hotel company to manage the hotel or cede all the units under the hotel management agreement (HMA) creating their own corporation. However, these two situations would not be able under the condominium regulation, but they would be under corporation legal framework. Therefore, the contracts that seem to be more suitable to cede the units in "condohotel" regime are the mandate contract or the service contract or a mix of all.

Taking into account that the tourist and the real estate sectors are the main economic engines of the Spanish economy, it is worth to improve the regulation of "condohotels" and to solve the legal gaps and inaccuracies. Meanwhile, it is important to inform those interested in acquiring an accommodation unit under the "condohotel" regime, the particularities and the current limitations of this regime to avoid misunderstandings. That is to say, that prospective investors should not confuse "condohotels" with a traditional condominium regime or with "timesharing".

Consequently, we believe that one possible solution would be to establish an additional regulation of "condohotels" to be added in condominium rules, regulating them as a special form of condominium [28]. In this sense, the regulation of "condohotels" should foresee the following features as the core elements of the institution:

- The definition of "condohotel" as a tourist establishment organized through a special condominium regime where the owners of the private units cede them to a hotel company so that it could offer these units to the guests through accommodation contracts during the period that the units' owners are not using their units. In exchange, the hotel company shares part of its profit with the owners. These latter, in addition to have an exclusive property right over their unit, also own the right to use common areas.
- The principle of the "single operator or management": only the hotel company can offer the private units to guests and not the owners by themselves. Moreover, only the hotel company is the one which manages the whole tourist establishment.
- The obligation of the units' owners to cede the private rooms to a single hotel company under a mandate or a service contract. Therefore, when investors buy the private units they must cede them to the hotel company from the very first moment (as soon as they buy the unit). The hotel company is also entitled to own private units, since this would not mean a breach of the afore mentioned principle. Consequently, it cannot be possible that investors do not cede their units to the hotel company or that they unilaterally terminate the contract. For that reason, it should be provided what would be the other consequences of breaching the obligations by the owners or the hotel company. However, this might affect the 'core' content of the property right (art. 33 Spanish Constitution) and also the right to cancel the contract (art. 1733 Civil Code and art. 622-22 Catalan Civil Code).
- To acknowledge the hotel company as a third party under a condominium regime that manages the hotel. All of the private units' owners shall jointly agree to change the hotel company or decide the termination of the "condohotel" and convert it into a traditional hotel or a conventional condominium. The hotel company, due to their duties on the management and the exploitation of the hotel, should also contribute to the maintenance of both private units and common areas hotel regardless if it owns private units.
- The acknowledgement of rights, obligations and responsibilities of the private units' owners, the hotel company and the government body regarding the private units and also the common areas. They can also be established in the by-laws and in the hotel rules.

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- The prohibition of the owners using the units as a residence and the recognition of sanctions or consequences that will be applied in case of breach. In this sense, it is important to establish, as the current regulations of the AC do, what will be considered a residential use.
- The regulation of how part of the profit will be satisfied to the owners and under what conditions. It could be possible to proportionally discount from this profit the use made by the owner. This can be an incentive to the owners to occupy their private units as less as possible.

If all these issues and legal uncertainties raised are not regulated, the “condohotel” regime will hardly be successful or attractive for investors, despite the importance that the real estate and the tourist sectors and also the condominium regime have in Spain.

NOTES:

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2. This is recognized in the Preamble of the Spanish Condominium Act 49/1960, 21 July, BOE no. 176, 23.07.1960.
3. See further the Report on Housing in Europe “State of Housing in Europe”: <http://www.housingeurope.eu/resource-1001/a-state-of-housing-map-of-europe> (last checked on 6.04.2018).
4. From 2005 to 2007 Spain recorded its lowest unemployment rates. Its minimum was in 2007 with 8.26%. In 2008 was 11.34% and in 2009, 18.01%. See: http://www.ine.es/dyngs/INEbase/es/categoria.htm?c=Estadistica_P&cid=1254735976595 (last checked on 6.04.2018). See futher: Gimeno Tomás, L. (2011), “Propuesta de Reforma del sector hipotecario español: análisis de la oportunidad de la dación en pago”, *Estudios de Progreso, Fundación Alternativas* , nº 68/2011, p.11
5. See in depth the Report: “Promoting protection of the right to housing - Homelessness prevention in the context of evictions” at : <http://ec.europa.eu/social/main.jsp?catId=738&langId=en&pubId=7892&type=2&furtherPubs=yes> (last checked on 6.04.2018).
6. In Spain is applied the Condominium Act 49/1960, 21 July, BOE no. 176, 23.07.1960 and the Civil Code, GACETA 25.07.1889. But in Catalonia is applied the Act 5/2006, 10 May, of the fifth book of the Civil Code of Catalonia, DOGC no. 4640, 24.05.2006 and BOE no. 148, 22.06.2006. See more in depth in the study carried out by Nasarre Aznar on the current state of the condominium in Spain after the crisis in Nasarre Aznar, S., (2016), “New trends in condominium law and Access to housing in post-crisis Spain”, in AMNON LEHAVI (ed.), *Private Communities and Urban Governance: Theoretical and Comparative Perspectives*, Springer, Switzerland, pp. 165 ff.
7. Available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Housing_statistics (last checked on 6.04.2018).
8. Available at : <https://www.e-unwto.org/doi/book/10.18111/9789284419029> (last checked on 6.04.2018).
9. Avalaible at : <http://reports.weforum.org/travel-and-tourism-competitiveness-report-2017/europe-and-eurasia-results/> (last checked on 6.04.2018).
10. BOE no. 311 de 29.12. 1978.
11. See the balance of the Frontur statistics at: http://www.hosteltur.com/193530_tres-comunidades-copan-61-turismo-extranjero-llega-espana.html (last checked on 6.04.2018).
12. Art. 42 of the Tourist Act 13/2011, 23 December, of Andalucía, BOJA no. 255, 31.12.2011 and BOE no. 17, 20.01.2012.
13. Art. 35 of the Tourist Act 8/2012, 19 July, of Balearic Islands, BOIB no. 106, 21.07.2012 and BOE no. 189, 08.08.-2012). However, in the Balearic Islands, the Additional Provision of Decree-Law 1/2016, of January 12 (BOIB no. 6, 13.01.2016 and BOE no. 55 de 04.03.2016.), established that article 35 of the Tourism Act which regulates the “condohotel”, will not be applicable until it was amended or until December 31, 2017 if this modification has not been completed before (this modification has not been made yet).
14. Art. 30 of the Act 2/2013, 29 May, on the renovation and modernisation of tourism, BOIC no. 103, 31.05.2013 and BOE no. 145, 18.06.2013.
15. Art. 8 bis of Tourist Act 3/1998, 21 May, DOCV no. 3248, 22.05.1998 and BOE no. 149, 23.06.1998 introduced by art. 96 of the Act 7/2014, 22 December, on Fiscal Measures, Administrative and Financial Management, and Organization of the Generalitat, DOCV no. 7432, 29.12.2014 and BOE no.35, 10.02.2015.
16. Act 3/2015, of May 11, dealing with tax, financial and administrative measures, DOGC no. 6830, 13.03.2015 and BOE no. 81, 04.04.2015. In Catalonia the Act 3/2015 adds the eighth Additional Provision to the Catalan Tourism Act 13/2002, of 21 June (DOGC no. 3669, 03.07.2002 and BOE no. 169, 16.07.2002), which orders the regulation of the condominium in Tourist establishments. See the draft Decree of the tourism regulation of Catalonia (2016)

in:http://empresa.gencat.cat/ca/treb_departament/treb_tauler_d_informacio_publica/normativa-en-tramit/projecte-decret-reglament-turisme/ (last checked on 6.04.2018).

17. In this sense, in relation to condominium, art. 553-1 of the Catalan Civil Code also refers to it as a "legal regime", as it is a form of dwellings organization.

18. There will be two or three parts depending on whether the hotel company and the owner of the entire hotel (before the division into condominium) coincide or differ.

19. The tourist accommodation contract is “an agreement where the use of a private unit (dwelling or room) is ceded to a guest for a price and for a short time: days, weeks or months, so it cannot be used to satisfy the need for permanent housing” or “a contract between the tourist establishment (hotel, spa, rural hotel) and the client or customer, who has the right to use the unit provided with furniture, equipment and facilities and complementary services such as food, washing and ironing of clothes, etc.”.

20. In general, it might be between 15% and 40% per m² more than the price of a second residences. See the conference given by CABOT Bernardo, *Jornadas sobre Turismo residencial y Condohoteles* and DEL HORNO, Carlos, *Luces y sombras del modelo Condo-hotel*”, both available at: <http://www.cehat.com/frontend/cehat/CEHAT-Garrigues-Y-THR-Analizan-La-Formula-Condo-hoteles-vn2936-vst338> (last checked on 6.04.2018).

21. However, the parties might agree that if the owner does not occupy the room during the established period, the profit may be higher. That is to say, the profit can change depending on whether the owner occupies their rooms or not.

22. BOE no. 25.11. 1994.

23. Charter of Fundamental Rights of the European Union (2016/C 202/02). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:12016P/TXT> (last checked on 6.04.2018).

24. Act 12/1992, of May 29, on agency contract (BOE 29-05-1992).

25. BOE no. 162, 07-07-2012.

26. Highlighted in the conference given by DEL HORNO, Carlos; *Luces y sombras del modelo Condo-hotel*”. Available at: <http://www.cehat.com/frontend/cehat/CEHAT-Garrigues-Y-THR-Analizan-La-Formula-Condo-hoteles-vn2936-vst338> (last checked on: 8-07-2017).

27. See the Spanish Court ruling by the STSJ of Andalusia n° 1672/2015 of June 29, 2015 (JUR 2015\217485).

28. Delgado Truyols. A. (notary of Balearic Islands) also defends this position. See at: <http://www.elnotario.es/practica-juridica/3899-los-condohoteles-en-espana-una-nueva-forma-de-propiedad> (last checked on 6.04.2018).

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