

Commercial real estate in Turkey: overview

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A Q&A guide to corporate real estate law in Turkey.

The Q&A gives a high level overview of the corporate real estate market; real estate investment structures, including REITs; title; tenure; sale of real estate; seller's liability; due diligence; warranties; real estate tax and mitigation, including VAT and stamp duty/transfer tax; climate change targets; restrictions on foreign ownership; real estate finance; leases; planning law; and proposals for reform.

The corporate real estate market

1. What have been the main trends in the real estate market in your jurisdiction over the last 12 months? What have been the most significant deals?

Over the last year, the real estate and construction markets have been going through a recovery period. Despite a negative outlook at the start of 2019, the trend has been upward, especially in the last quarter of 2019. However, this upturn will likely be affected by the 2019 novel coronavirus (COVID-19) pandemic, which has had an adverse effect on both supply chains and consumer demand in the Turkish real estate market. While the sales market remains quiet, there has been an increase in disputes between tenants and landlords.

Urban regeneration is still the focus of interest, due to the vast amount of buildings and infrastructures vulnerable to earthquake. Under the recently enacted Urban Regeneration Law, the government has been conducting many prominent urban regeneration projects. Officials from the Ministry of Environment and Urbanisation have stated that it aims to regenerate 1.5 million houses within the next five years. To this end, the Ministry of Environment and Urbanisation introduced the Regulation on the Classification and Recording of Building Contractors (published in the *Official Gazette* dated 2 March 2020 and numbered 30702), which sets up a classification of building contractors according to their economic, financial, professional, and technical competencies, to ensure compliance with building standards.

Upcoming residential projects are expected to appeal to the middle-income population. The Housing Administration (TOKİ) plans to play an essential role in this regard, while the Central Bank of the Republic of Turkey (TCMB) has supported credit growth and a considerable reduction in interest rates. Further, the Banks Association of Turkey made a recommendation to facilitate loan and ensure that demand for personal loans is being met. Additionally, state-owned banks launched a low-interest long-term housing loan campaign in June 2020, followed by a couple

of major private banks. These initiatives aim to resolve the problem of excessive demand for loans in the market stemming from financial difficulties.

Another promising prospect for the real estate market in Turkey is the possibility to acquire Turkish citizenship through the acquisition of real property worth at least USD250,000. Real estate investors have recently taken advantage of this opportunity, relying on the current low value of the Turkish Lira.

Alongside mid-scale developments, major infrastructure projects have been one of the main driving forces in maintaining growth of the sector. Examples of recently completed infrastructure projects, referred to as "mega projects" due to the large amounts of investment involved, include the following:

- Gebze-İzmir toll-road.
- New Istanbul airport.
- Başakşehir city hospital.

Examples of infrastructure projects that are under construction but have yet to be completed include the:

- Çanakkale bridge.
- Istanbul Finance Center.

The energy sector has also been attracting the attention of the government and investors, with several pipelines (TANAP, TurkStream) and nuclear power plant projects being driven by the government. The renewable energy sector (specifically solar energy and wind power plants) attracts many investors. In addition, many large hospital projects, enabled by public private partnership legislation, have been initiated or completed over the past couple of years.

Capital market instruments are taking on an important role in the real estate sector. Real estate investment funds, lease certificates, and real estate certificates have been used in certain projects. General real estate investment funds have also been established. The volume of these instruments is expected to increase in the next period.

Real estate investment

2. What structures do investors typically use for real estate investment in your jurisdiction and what are the main advantages and disadvantages of each (for example, flexibility and tax transparency)?

Common structures

The most commonly used structures for real estate investment in Turkey are asset purchases, share purchases, real estate investment funds (REIFs) and real estate investment trusts (REITs).

Asset purchases

In asset purchases, the title to a property is transferred and registered at the land registry. The sale agreement is executed at the land registry office and the transfer is registered in the land registry records. In principle, the buyer does not assume the debts and liabilities of the seller, due to the transfer of ownership. In asset purchases, both parties to the transaction pay a title deed registration fee at a rate of 2%.

It is less cumbersome to conduct due diligence on the seller during an asset purchase. After owning a property for more than five years, a real person owner is exempted from income tax. VAT is paid for the sale of real property owned by companies and/or real person merchants. A transfer fee is also applicable.

Corporations are exempted from VAT and 75% of the corporate tax, provided that the property is kept for two years and the sale of real property is not the corporation's field of business. There may also be favourable tax regimes under double taxation agreements.

In addition, it is not possible to keep the transaction confidential, as the transfer of title is recorded by the land registry.

Share purchases

The main advantage of share purchases in Turkey is flexibility. The share transfer can be made with a simple written transfer deed, whereas an asset transfer must be registered at the title deed registry. No VAT is payable for share transfers. In addition, the buyer does not have to pay a transfer fee or stamp tax, and parties can apply flexible structures with regard to the transfer (for example, on closing or under the share purchase agreement). Additionally, share purchase agreements are exempted from stamp tax.

The main drawback of share purchases is the need to conduct detailed due diligence on the target company, since all debts and receivables of the company transfer to the buyer, who also must pay the transaction fee.

REITs and REIFs

A REIT is a specific type of public company, primarily focused on the real estate sector. A REIF is a fund that invests in real estate. 25% of a REIT's shares must be offered to the public, whereas REIF shares can only be offered to institutional investors (for example, investors holding capital market instruments exceeding TRY1 million). Both REITs and REIFs are under the supervision of the Capital Markets Board and therefore must comply with general principles of corporate governance and risk management. Corporate governance and capital market board supervision have an important role to increase investors' confidence in these instruments. In addition, the public offering/establishment of fund procedure increases transaction costs.

A general corporate tax exemption is applicable to both REITs and REIFs. Both structures offer several tax exemptions for the amounts paid to investors (for example, dividend payments and investment returns).

3. What are the main sources of finance and types of investors for real estate investment in your jurisdiction? Does your government encourage overseas investment into real estate in your jurisdiction, for example through real estate investment legislation?

The main sources of finance for real estate investment in Turkey are banks, equity, national and foreign individuals and institutional investors, public offerings, and REIFs. Real estate projects are also financed by preliminary sales, where buyers benefit from a discounted price and developers obtain cash finance for construction.

There is no general state incentive for foreign investment in Turkey. State incentives are granted based on the type, size and location of the investments. However, the Foreign Direct Investments Law (FDIL), which regulates foreign direct investments in Turkey, eased the requirements on foreign nationals wishing to invest directly in Turkey. The FDIL encourages foreign direct investments in Turkey through the principle of equality (that is, by promoting equality among all companies incorporated under Turkish law regardless of foreign shareholding). In line with the principle of equity, foreign capital companies can benefit from these incentives under the same conditions as local investors.

Foreign investment is also supported by the government with the Investment Support and Promotion Agency. It is responsible for attracting foreign investment in Turkey and assisting foreign investors by providing free-of-charge services such as market analysis, finding local companies for potential partnership, assisting with legal procedures, and legislation issues.

There is a special incentive regime, including tax incentives concerning REIFs and REITs. The Turkish Government is pursuing an economic policy that is heavily focused on real estate, to create a favourable market for real estate investment. The government recently lowered the amount to be invested in the acquisition of real estate to acquire Turkish citizenship, from USD1 million to USD250,000. This has attracted the attention of many foreign individuals. Foreign individuals can also benefit from this rule by executing a preliminary sales contract (namely, a promise to sell agreement) before a notary public regarding real property worth at least USD250,000. It is also possible to acquire Turkish citizenship by buying real estate from projects under construction.

The number of houses sold to foreign nationals has increased by 105% in the last two years. This is believed to be due to the possibility of acquiring citizenship through real estate investment.

Restrictions on foreign ownership or occupation

4. Are there restrictions on foreign ownership or occupation of real estate (including foreign ownership of shares in companies holding real estate)? Are there restrictions on foreign guarantees or security for ownership or occupation and on lending for the purchase of real estate?

A foreign individual can acquire ownership or other property rights if he/she is a citizen of one of the countries approved by the Council of Ministers. This list is not public, but the respective land registry can be consulted to

confirm whether a person can acquire real property in Turkey. Each foreign individual can purchase a maximum of 30 hectares of real property in Turkey. The Council of Ministers can double this amount, however conditions for such an increase are not regulated under the relevant legislation. In addition, the surface area of real property acquired by foreign individuals cannot exceed 10% of the surface area of each outlying district (*Article 35, Land Registry Law 2644*). If the land is acquired without any construction, foreign individuals must submit a project to be developed for the approval of the relevant Ministry within two years. The relevant Ministry ensures that the project submitted has been completed within the required period. The relevant land registry office examines whether all the above conditions are met before executing the registration.

The relevant land registry office also communicates with the respective military units (authorised by Turkish Chief of Staff) to confirm whether the real property is in a military forbidden zone, military security zone, or strategic zone.

Foreign companies incorporated abroad cannot acquire real property in Turkey unless permitted under special laws such as the Petroleum Law, Tourism Law, or Industrial Zones Law. Foreign companies must also submit a project to be developed for the approval of the relevant Ministry within two years, if the land is acquired without any construction. The relevant Ministry ensures that the project submitted has been realised within the required period. However, these laws do not provide investors with enough flexibility in using their investment. To overcome this inflexible legal barrier, foreign investors often establish single-purpose foreign capital Turkish companies through which they acquire property for their real estate transactions in Turkey. A governorship approval procedure must be followed for the acquisition of real property by foreign capital Turkish companies.

The establishment of mortgages in favour of foreign companies (including banks and financial institutions) is not subject to the above restrictions or an approval procedure. However, the acquisition of limited rights *in rem* by foreign capital companies (for example, pre-emption rights) is subject to an approval procedure, although the required documentation for acquisition of rights *in rem* is simpler.

Security can be granted over real estate to foreign financial institutions without any restrictions. Repayments to a foreign lender under a security document or loan agreement are not restricted, unless they constitute a criminal act, such as money laundering.

Title to real estate

5. What constitutes real estate in your jurisdiction? Is land and any buildings on it (owned by the same entity) registered together in the same title, or do they have separate titles set out in different registers?

Land and independent units constitute real estate under Turkish law. Land and any buildings on it can have separate titles set out in different registers.

Under Turkish law, the most basic category of property right is simple freehold ownership (*mülkiyet*). Freehold ownership gives the property owner the right to use, benefit from, and dispose of a piece of property. These rights are conceptually separable from one another, and more limited property rights can be created by carving out some of these rights from simple freehold ownership. Turkish law also recognises condominium ownership, allowing independent units in a completed structure to be owned separately from the main structure, with the common areas

of the main structure remaining under joint ownership among the owners of all independent units in the building. As a general principle, the ownership of a building on a given piece of land comes with the ownership of the relevant land, except for the establishment of a right of construction over the land.

6. How is title to real estate evidenced? What is the name of the public register of title and the authorities responsible for managing it? Is electronic access and electronic conveyancing available?

The land registry office provides a definitive record of real estate ownership, and has its roots in the Ottoman land registry system. Land records are kept in both the central database in Ankara and at the local land registry office. These records can be reviewed by parties who can provide evidence of ownership or rights over the respective land and persons with specific professions, such as attorneys, city planners, and valuation companies.

Transfers of title must be registered at the land registry to gain effect. Similarly, all interests in real property, including mortgages, usufruct rights, rights of first refusal, and rights of repurchase must all be registered to ensure validity. Electronic access by the public is not available, although property owners can view their property through their own accounts on the government's electronic database.

7. What are the main information and documents registered in the public register of title? Can confidential information or documents be protected from disclosure in the public register of title?

The main information and documents registered at the land registry are:

- Information pertaining to the owner.
- Acquisition dates.
- Transfer types (for example, sale and succession).
- Surface area of the property.
- Encumbrances.
- Declarations concerning the property (for example, mortgages, lease annotations, lawsuits and expropriations).

In principle, land registry records are accessible to all parties who can justify their interest in examining them. Qualified persons such as attorneys, city planners and valuation experts can access the land registry books. However, even qualified professionals cannot review detailed confidential information (such as the address or identity number of the owner), without the owner's consent.

Attorneys can also access land registry records online, using the Turkish ID number or tax number of an individual/legal entity. This is done through a system called TAKPAS, which was put into operation following the protocol signed between the General Directorate of the Land Registry and Cadastre and the Union of Turkish Bar Associations.

8. Is there a state guarantee of title? Is the authority that manages the public register liable to pay compensation for any errors it makes in relation to title registration? Is title insurance available and is it commonly used?

Title insurance is offered by several insurance companies.

There is also a state guarantee of title insurance, under which the state is liable for all damages arising from land registry records and can have recourse to its officers at fault (*Article 1007, Turkish Civil Code*). However, the officers responsible for keeping these records do not have to be at fault for the state to be liable. The damage can arise from an error or omission in keeping the records. State guarantee of title insurance is a free and public insurance. Therefore, title insurance is rarely used.

9. How can real estate be held (that is, what types of tenure and other main ownership rights exist over land)?

The main types of ownership are freehold and leasehold.

Freehold ownership gives the property owner the right to use, benefit from, and dispose of a piece of property. These rights are conceptually separable from one another, and more limited property rights can be created by carving out some of these rights from simple freehold ownership.

Turkish law permits the grant to a third party of the right to build on a piece of property (*üst hakkı*), and the holder of this right becomes the owner of any structures that are built on the land within the right for a certain period. If the right to build is intended to be independent and indefinite (more than 30 years) (*bağımsız ve süreklî*), the holder of the right can register it at the land registry as a separate property interest, and this right is essentially treated no differently to a right in an independent parcel of real estate.

It is also possible to separate the right to use and to benefit from a piece of property from the right of disposal. The complete right of use and benefit can be granted to a third party, which is known as a usufruct right (*intifa hakkı*). In a strict sense, usufruct under Turkish law is a personal right rather than a property right, because this right cannot be alienated or devised, and does not include the right to make fundamental changes to the established use of the property. The grant to a third party of a usufruct right leaves the property owner with the sole right of disposal.

Sale of real estate

Preliminary agreements

10. What types of preliminary agreements are typically used in the sale of real estate? Are they legally binding?

There are two types of preliminary agreements:

- Letters of intent/memorandums of understanding.
- Promise to sell agreements.

Letters of intent/memorandums of understanding are not legally binding. However, parties can execute promise to sell agreements before a notary public, which makes them fully binding agreements.

Sale contract

11. Briefly outline the typical main provisions of a corporate real estate sale contract and main real estate provisions of a typical share purchase agreement.

Real estate sale contracts are executed as a standard form contract at the land registry. They incorporate only basic provisions as to the identity of the buyer and the seller (for example, the purchase price and property information). It is not possible to make a tailor-made sale contract. However, promise to sell agreements can be executed in more detail, in line with the parties' agreed format and content, before a notary public. In addition to provisions arising from specific features of the respective lands and projects, promise to sell agreements generally include the following provisions:

- Purchase price.
- Information pertaining to the property.
- Conditions precedent, if any (for example, approval of the zoning plan, completion of zoning implementation, unification and demolition of existing buildings).

- Termination rights and conditions.
- Payment dates and conditions.
- Representations and warranties (for example, ownership and zoning status).
- Indemnity and escrow mechanisms.

The above terms and conditions are also included in real estate-related share purchase agreements, as well as representations and warranties related to the target company, payment adjustment provisions, and disposition of liabilities at the date of closing.

Due diligence

12. What real estate due diligence is typically carried out before an acquisition and what key areas does it cover? Which documents are typically reviewed? Which specialist advisers are usually involved and which reports do they typically produce?

When purchasing real estate, buyers generally engage lawyers for due diligence purposes. Lawyers inspect the land registry records and the usage restrictions included in the zoning plans for the location. As the land registry records are authoritative, a thorough inspection of these public records generally suffices to provide comfort to buyers. In addition, technical consultants are appointed for environmental and technical due diligence matters, and financial advisers are appointed for share deals. Therefore, separate legal and technical due diligence reports are typically produced, and separate financial reports are prepared in share deals.

Information such as land registry records, cadastral office records, municipality records, zoning plans and plan notes are reviewed during a basic real estate due diligence. These records contain information on, for example, ownership, encumbrances, status of property, encroachments, zoning matters, building-related licences/permits, and property taxes.

Sellers' warranties

13. What real estate warranties are typically given by a seller to a buyer in the sale of corporate real estate and what areas do they cover? What are the main limitations on warranties, for example are they typically qualified by disclosure?

The types of representations and warranties given in real estate sales differ significantly depending on how the sale is structured. Asset sales typically involve very limited representations and warranties, given that comprehensive and definitive information about the encumbrances on land, including granted easements, established security, and preemptive rights are all revealed in public records. However, if the deal is a share sale, with the entity holding the asset changing hands rather than the underlying asset itself, extensive representations and warranties are generally required. Environmental representations and warranties are occasionally demanded but rarely granted.

The following representations and warranties can be given in relation to a sale of property:

- **Ownership.** The owner represents and warrants that it is the undisputed owner of the property and that third parties do not have any right over the property, that there are no encumbrances over the property, and that there is no pending lawsuit that involves the property.
- **Zoning.** The owner represents and warrants that the zoning of the property is appropriate for construction of a building that is compatible with the specified use (for example, residential, commercial, industrial use and so on).
- **Specific features of the property.** Other representations and warranties can be obtained according to the specific features of the property (for example, historical areas).

The representations and warranties given by the owner are typically qualified by disclosure. In a share sale deal, real estate-related representations and warranties are also included in the share purchase agreement, in addition to general representations and warranties.

Liability

14. Does a seller have any statutory or other liability to the buyer in a disposal of real estate?

The seller has statutory defects liability for defects and deficiencies in the property. The seller is also liable for any restrictions to the property such as any third party rights or limitations. There is a defined statutory limitation period for defects liability relating to immovable property sales (one year, five years and ten years, depending on the type of asset and the provisions applicable). The parties can also agree on a monetary limit to the seller's liability. This agreement is valid, unless there is a wilful act or gross negligence on behalf of the seller.

15. Briefly outline the environmental legislation and potential liability for a buyer in a purchase of real estate. Is it common to carry out environmental surveys and searches and to obtain environmental insurance? How is environmental liability typically dealt with in the sale contract?

The obligation to comply with environmental regulations is generally imposed on owners of real property rather than the property itself. Therefore, a buyer of real property is in principle not responsible for any contamination that has taken place before taking ownership. However, there is a statutory presumption that the current occupant has caused any contamination, so the occupant may need to rebut that presumption by proving that an earlier owner caused the pollution. This is one area where due diligence findings may prove useful. It would be to the buyer's advantage to carry out environmental surveys and searches and obtain environmental insurance, although this is not a very common practice and these surveys are specifically conducted in areas where there is suspicion of contamination. The parties can regulate this matter in their sale contract by stipulating that the buyer will have recourse to the seller for environmental liability.

16. Can an owner or occupier inherit liability for other matters relating to the real estate even if they occurred before it bought or occupied it? Can a seller or occupier retain any other liability relating to the real estate after it has disposed of it?

An owner can incur criminal, civil and administrative liability for other matters relating to the real estate, even if they occurred before they purchased the real estate. The previous owner is essentially liable for defects and deficiencies in the construction, but the new owner can also incur liability for omitting to inspect the construction. There is no clear written rule in this regard.

For criminal and administrative liability, the general rule is that whoever carried out illegal construction works is liable for administrative fines. However, the new owner must prove that the breach was performed before the transfer of title. Therefore, proper due diligence is necessary before the transfer of property. In addition, the new owner will also be affected by the outcome in the event of the sealing of the property and issue of a demolition decision.

Regarding civil liability, building owners have strict liability and whoever is the owner on the title deed when the damage occurs is liable. Persons with a right of construction or occupation over the property will be liable, severally with the owner, for damages arising from deficiencies in maintenance of the building. The new owner has a right of recourse against the previous owner in this regard. The occupier can also be liable for any damages caused due to its fault.

Completion arrangements

17. What are the typical arrangements and main documents required for completion of the sale? When does title transfer and what are the formal legal requirements to execute the sale documents, transfer the real estate and register the change of title? Is notarisation required?

The parties must perform the transfer of the real estate and register it in the name of the buyer at the land registry. The main documents and actions required for completion of the sale are as follows:

- The title to the property is transferred and the transfer is registered at the land registry office.
- Real estate sale contracts must be executed before the land registry.
- Simple documents related to the parties (for example, proof of identity and signatory circular) must be submitted to the land registry. However, if one of the parties is a foreign national or a company with foreign capital, governorship approval must also be obtained.
- Authorisation documents must be obtained from the relevant trade registry office for legal entities.
- Approval of the relevant governorship must be obtained for foreign capital legal entities, which is necessary for the acquisition of real property by foreign capital Turkish companies if the majority of shares are owned by foreign companies or real persons.
- A document from the municipality indicating the registered tax value of the property must be produced.
- A document from the municipality indicating that there are no outstanding real property taxes must be produced.

If representations and warranties are to be specified and the property will not be sold in its form as-is, it is advisable to execute a promise to sell agreement before a notary public to provide for these respective representations, warranties and conditions. On fulfilment of the conditions precedent under the promise to sell agreement, the title transfer can be executed by the parties at the land registry.

Real estate tax

18. Is stamp duty/transfer tax (or equivalent) payable on the purchase of real estate? Who pays, what are the rates and are there any exemptions? Does it apply to the transfer of shares in a company holding real estate and at what rate?

There is no stamp duty for a sale contract executed before the land registry and a promise to sell agreement executed before a notary public. However, a title deed registration fee at 2% of the declared purchase price must be paid by each party for the transfer of property.

A notary fee must also be paid if a preliminary sale contract is executed before a notary public. This is not a flat rate and is subject to change according to factors such as the number of pages of the contract and the purchase price.

Share purchase agreements are currently exempted from the title deed registration fee.

Value added tax is not applicable in share deals.

19. Are any methods commonly used to mitigate real estate tax liability on acquisitions of large real estate portfolios? What is the general approach of the tax authorities in your jurisdiction to such schemes?

Methods such as division, mergers, and share transfers are used to benefit from mutual tax agreements and exemptions. Share deals are used to mitigate real estate tax liability, especially if there are any inter-governmental agreements providing tax exemptions. Tax authorities generally welcome genuine structures that enable the application of tax exemptions. In addition, REIFs can be used to structure a tax-efficient real estate transaction.

20. Is value added tax (VAT) (or equivalent) payable on the sale or purchase of real estate? Who pays? What are the rates? Are there any exemptions?

VAT is not payable on the sale of real estate owned by non-professional individuals.

VAT is payable on the sale or purchase of real estate owned by real person merchants and companies. The general VAT rate is 18%. The general VAT rate is applicable to commercial properties.

Reduced VAT (at a rate of 1%) applies to the sale of residential properties with a net area smaller than 150 square metres, depending on certain conditions (for example, if the construction permit was obtained before 1 January 2013 or the construction is within the scope of Urban Regeneration Law).

If the construction permit was obtained after 1 January 2013 and the building is not within the scope of the Urban Regeneration Law, a gradual VAT rate will apply (1%, 8% and 18% according to the registered value of the land). However, the VAT rate applicable for residences, commercial property and offices is 8% until the end of 2020.

In practice, VAT is generally paid by the buyer. Several exemptions apply to certain types of institutions, such as asset management companies, asset leasing companies, and banks. In addition, certain exceptions are provided for properties of a historical nature.

The sale of land held by corporations for more than two years is exempted from VAT. However, this exemption does not apply to limited liability companies and corporations that conduct real estate sales as a business.

21. Are municipal taxes paid on the occupation of business premises? Are there any exemptions?

There is no periodic tax applicable to the occupation of business premises. However a fee, which is determined by municipalities, is paid for obtaining and renewing operation permits. There is no specific exemption from operation permit fees. In addition, an annual property tax must be paid to municipalities by the owner, which is determined by municipalities according to the value of the respective land. There is no significant exemption from real property tax for businesses.

Climate change issues

22. Are there targets or incentives to reduce greenhouse gas emissions from buildings in your jurisdiction? Is there legislation requiring buildings to meet certain minimum energy efficiency criteria?

Greenhouse gas emissions are regulated by the Regulation on Tracking Greenhouse Gas Emissions. This regulation provides certain criteria for tracking, reporting, and verifying greenhouse gas emissions.

The Regulation on Energy Performance in Buildings contains rules for building construction to meet certain minimum energy efficiency criteria. Under the regulation, if the architectural, mechanical, and electrical projects of a building do not comply with the regulation in terms of energy efficiency criteria, then no construction permit will be granted by the relevant authority. In addition, if the construction is not carried out in accordance with the official projects prepared under the regulation, the building occupancy permit will not be granted until the deficiencies are rectified.

23. Are provisions relating to the energy efficiency of buildings commonly included in contracts for the sale of real estate or in leases (for example, green leases)?

Provisions relating to the energy efficiency of buildings are not commonly included in real estate sale or lease contracts. In certain deals, the obtaining of a LEED gold or premium certificate is demanded from sellers or contractors. In addition, some developers market flats/offices by taking advantage of green building certificates.

Real estate finance

Secured lending involving real estate

24. Briefly outline the typical security package required by lenders in relation to real estate lending. How are the most common forms of security interest relating to real estate created and perfected (that is, made valid and enforceable)?

In general, conventional lending techniques apply under real estate law. In most cases, mortgages are established over the land pertaining to the project and other lands owned by the developer (where applicable) as collateral. Mortgages are valid and enforceable security interests under Turkish law and must be established before the land registry.

In addition, personal guarantees (such as sureties and parent guarantees), assignment of receivable schemes, and share pledges are generally used by banks. These are made in written form. There are no additional formal requirements.

25. What other real estate related measures do lenders typically take to protect themselves against default by the borrower?

As lenders, banks execute very detailed credit agreements to secure their position by inserting clauses such as conditions precedents and detailed default clauses dealing with the insolvency or financial difficulty of the borrower. Security packages are also useful in these cases.

26. Can lenders incur environmental liability? What measures do lenders typically take to manage potential environmental liability?

The primary principle is that the "polluter pays" (*Article 28, Environmental Law*). Therefore, there is no legal provision holding lenders liable under environmental regulations.

27. Briefly outline the main remedies for lenders in relation to the secured real estate if the borrower defaults on the loan. What is the effect of the borrower's insolvency on the lender's remedies?

The main remedy for lenders in relation to secured real estate is the sale of the property by triggering a foreclosure procedure. Under Turkish law, in the event of a borrower's default, lenders can only force the sale of the property with the involvement of the execution offices. It is not possible to provide an obligation under credit agreements to transfer the title to the property in the event of default.

However, lenders of a secured debt are protected in the event of a borrower's insolvency. Debts secured by a mortgage must be paid before public debts during insolvency proceedings.

28. Briefly outline key additional issues for lenders in relation to construction and development projects.

Lenders conduct detailed due diligence regarding construction and development projects. This comprises a review of zoning, land registry, and cadastral records of the property as well as key contracts (for example, the construction agreement), licences, and compliance with legislation and regulations.

In general, the borrower will likely be in default for credit payment in the event of a cessation of construction or operations. Therefore, confirming whether there is a risk of the cessation of the project is relevant. This due diligence is also particularly crucial where a mortgage is established over project land, since the mortgage is dependent on the value of the land and the ownership right of the borrower over the land.

Lenders also obtain collateral such as assignments of receivables and share pledges, in addition to mortgages, to secure their position in the event of the borrower's default.

Other real estate financing techniques

29. Are other real estate finance techniques commonly used in your jurisdiction? For example, real estate securitisation and sale and leasebacks.

An example of other real estate finance techniques commonly used in Turkey is the issuance of real estate certificates and lease certificates, in accordance with capital market regulations. Other techniques such as public offerings of shares in REITs or issuance of shares in REIFs to qualified investors are also available. Sale and leaseback structures are also used. Islamic finance (for example, sukuk and revenue sharing arrangements) is another option.

Real estate leases

Negotiation and execution of leases

30. Are contractual lease provisions regulated or freely negotiable? Which legislation applies?

Freedom of contract is a recognised general principle under Turkish law. However, contractual leases fall under a specific area of law where certain mandatory provisions apply. Under a specific regulation on protection of Turkish currency, local companies and local real persons are required to make leases using the Turkish currency. However, this does not apply to lease agreements where the tenant is a foreign individual or a Turkish foreign capital company. There are limited grounds for cancelling a lease contract (for example, the tenant can terminate the lease contract at the end of the lease term, whereas the landlord can only terminate an agreement with just grounds, in certain limited circumstances). In addition, certain limitations on rent increases are imposed and increase of rent in foreign currency is prohibited by law. These provisions and other similar provisions (such as the prohibition on including penalty and acceleration clauses) entered into force on 1 July 2020 for lease contracts where the tenant is a merchant or a company.

31. What are the formal legal requirements to execute a lease? Does the lease have to be executed by certain parties or as a deed? How do the formalities differ for a company, partnership and for individuals?

There are no formal requirements to execute a lease contract under Turkish law.

However, the execution of a written contract is advised for evidentiary reasons.

Rent payments

32. How are rent levels usually reviewed and are there restrictions on this? Is stamp duty and VAT (or equivalent) payable on rent? Is a rent security deposit required and does it have to be managed in a certain way?

If the rent is agreed in Turkish Lira, it can be increased according to the producer price index (*Article 344, Turkish Code of Obligations*). Rent cannot be increased within the first five-year period if the rent is agreed in foreign currency. Although rent increases are subject to a limit under the law, the landlord can initiate a lawsuit for re-determination of the rent and a claim for adjustment of the rent according to the market value.

Residential properties are exempted from stamp duty, which is only payable for commercial property lease agreements. If the leased property is part of a commercial enterprise or owned by a limited liability company or corporation, VAT applies at a rate of 18%. If the landlord of a commercial property is a real person, a withholding tax applies to the rent.

Payment of a security deposit by the tenant is not compulsory, although these deposits (cash or bank letter of guarantee) are generally collected by landlords as market practice. Although it is not applied in practice yet, the tenant's security deposit should be kept in a bank account that is jointly held by the landlord and the tenant. The application of this provision entered into force on 1 July 2020 for lease contracts where the tenant is a merchant or a company.

Length of term and security of occupation

33. Is there a typical length of lease term and are there restrictions on it? Do tenants of business premises have security of occupation or rights to renew the lease at the end of the contractual lease term?

The typical length of a residential lease is one year. However, this is not a legal requirement and the term can be freely determined by the parties. In business leases, longer terms (for example, five to 15 years) and extension options are possible. In addition, under Turkish law, there is a general renewal requirement with a one-year term, until the end of ten years following the expiry of the lease contract. During these ten years, the landlord can only evict the tenant on limited grounds. At the end of ten years, the landlord can terminate the agreement for no cause.

Disposal

34. What restrictions typically apply to the disposal of the lease by the tenant? Can the tenant assign or sublet the lease with the landlord's consent? Can tenants share their premises with companies in

the same group? What is the effect of a legal reorganisation or transfer/sale of the tenant on the lease and on a guarantee of the lease?

Subletting and assignment of the lease contract are prohibited without the written consent of the landlord. The landlord in a business lease cannot refuse to give consent for the assignment of the contract.

There is no specific provision under the law regarding the transfer of lease contracts to group companies or change of control of the tenant company. Therefore, assignments of leases to group companies are also subject to the general rules on assignment of a lease and are prohibited unless the parties consent. However, change of control of the tenant company is not restricted under Turkish law and does not trigger any default. In the event of a merger or division, lease contracts are transferred to the new entity by operation of law. The guarantee and surety also remain valid in the event of a merger or division. However, in commercial lease agreements, change of control is often deemed a breach of contract and therefore the approval of the landlord is required.

35. Does a landlord or tenant retain any liability under the lease after the lease is assigned?

In principle, the landlord or tenant ceases to be liable on the assignment of the lease. However, in business leases, the tenant as the assignor will be severally liable with the assignee until the expiry of the lease contract and for a maximum period of two years.

As the sublease of the property does not terminate the main lease agreement, the main tenant remains liable to the landlord.

Repair and insurance

36. Who is usually responsible for keeping the leased premises in good repair and for insuring the leased premises? Are there provisions for the ownership of lease improvements?

The landlord must provide the statutory building insurance in residential properties.

The tenant is responsible for ordinary repair and maintenance of the premises, whereas the landlord is responsible for improvements and major repair and maintenance. Tenants can alter leased premises if this is permitted under their lease contract. Structural improvements may require a licence from the local municipality, which are only issued to landowners. Once a landlord has consented to a tenant's application for works, the landlord cannot demand the return of the property to its previous condition. Tenants must leave improvements attached to the premises at

the end of the lease term and cannot demand compensation for any increase in the value of the property that may be caused by the tenant's alterations. All these rules can be modified by agreement.

Landlord's remedies and termination

37. What remedies are available to a landlord for a breach of the lease by the tenant? On what grounds can the landlord usually terminate the lease and what restrictions and procedures apply? What is the effect of the tenant's insolvency under general contract terms and insolvency legislation?

A landlord can terminate a lease contract in the following circumstances:

- If the landlord has served written notice on the tenant twice in one lease term for failure to pay rent.
- If the tenant has undertaken to vacate the leased premises on a certain date but failed to keep its promise.
- If the landlord has a specific need for the premises (for example, if a landlord or a landlord's family member must use the leased premises).
- If material repairs must be made to the premises and the tenant's continued occupation of the premises under these circumstances is not possible.
- If the tenant uses the premises in breach of terms and conditions of the lease contract. If the tenant's breach is not material, the landlord must give at least a 30 days' cure period. If the breach is material and is unlikely to be cured within the cure period, the agreement can be terminated with immediate effect.
- If the tenant is declared insolvent and fails to provide security for rent.

In the event of default due to non-payment of rent, a landlord can either give 30 days' notice to its tenant or directly commence execution proceedings with an eviction request. If the tenant does not pay the relevant amount within 30 days, the landlord can request eviction of the premises. If a landlord directly initiates an execution proceeding for payment of the rent, an accelerated procedure is applicable before the execution court. Otherwise, the eviction lawsuit will be heard before general courts.

If a tenant pays the relevant amount within 30 days, but the landlord ends up serving two valid notices within one year, the landlord will be granted the right to evict the tenant. If a tenant does not leave the premises despite its landlord's notice of termination, the landlord must initiate a lawsuit for eviction of the premises.

38. Can the tenant withhold rent payments in certain circumstances, for example for serious damage to the leased premises? Can the tenant terminate the lease in certain circumstances?

If there is a defect in the leased premises, a tenant can either ask the landlord to rectify the defect or rectify the defect itself and claim deduction of the amount from the rent. A tenant can terminate a lease agreement if the premises are not suitable for use in a material way.

Planning and development controls

39. In what circumstances can local or state authorities purchase business premises compulsorily? Is the purchase price market value?

Turkish law does permit expropriation of property on the grounds of public interest. The transfer can either take place voluntarily or the government can file a lawsuit for the transfer of private property to it, in return for compensation. The purchase price must match the market price.

The right to property is a constitutional right under Turkish law and is guaranteed under the European Convention on Human Rights. Therefore, in the event of any infringement of this right, it is possible to appeal to the Constitutional Court and the European Court of Human Rights under Turkish law.

40. What authorities regulate planning control and which legislation applies? Is there specific protection for special categories of buildings such as historic buildings?

In general, municipalities are responsible for making planning decisions. However, under certain circumstances, the law confers planning and zoning powers to certain ministries (for example, the Ministry of Development and Urban Planning and the Ministry of Culture and Tourism) and the Housing Administration (*TOKİ*), as part of the central administration. In Turkey, specific regulations apply to environmental, historical, and cultural assets and areas. In these cases, grants of zoning plans and permits are subject to additional approval requirements (for example, approval from preservation boards for cultural assets or the preservation commission for natural assets).

41. What planning consents are required for building works and the use of a building?

Construction and occupancy permits must be obtained for building works. Although it is not a planning consent, operation permits are required before carrying out commercial activities in a building. There are also additional requirements contained in specific regulations (for example, environmental impact assessments and discharge permits).

42. What are the main authorisation and consultation procedures in relation to planning consents?

Initial consents

In general, local municipalities grant planning consents (construction permits). Completing the application takes a considerable amount of time, as architectural and technical projects must be prepared before submitting it. After the application has been completed, depending on the workload of the municipality, construction permits are issued within one to three months. There is no heavy consultation procedure regarding construction permits, although approvals from relevant authorities should be obtained if the premises are of a specific nature (for example, preservation boards for cultural assets). Occupancy permits are also granted after completion of construction, which is a simpler and quicker procedure.

Third party rights and appeals

There is no administrative right of third parties to object to permits for construction or occupancy. However, lawsuits can be filed before administrative courts by concerned parties.

Reform

43. Are there proposals to reform real estate law and are they likely to come into force and, if so, when?

A set of regulations regarding the transfer of zoning rights and the establishment of organised markets for transfer of zoning rights are planned to be introduced. A revision of the Zoning Regulation is also planned, to ensure more legal guarantees for the protection of vested rights under the zoning legislation.

In addition, the Turkish Government is considering the introduction of legislation concerning real estate-related taxes and initiatives and domestic market support.

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- Advised various local and international investors on the acquisition of real estate portfolios, revenue sharing and construction agreements. Assistance for the financing of the acquisitions.
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