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Real Estate

Turkey

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Law and Practice

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1. GENERAL

1.1 Main Sources of Law

Real estate practice in Turkey is not governed by a separate and dedicated body of law. Instead, Turkish real estate law is integrated into the general operation of civil law, and different aspects of real estate law are governed by chapters in codes of general operation.

At the very top, property rights are secured by the Turkish Constitution and the European Convention on Human Rights, as an international treaty duly subscribed to by Turkey.

The Civil Code (*Türk Medeni Kanunu*) defines different property types, and regulates how property interests are created, transferred and extinguished. The Turkish Code of Obligations (*Türk Borçlar Kanunu*), which regulates contracts generally, also governs real estate-related contracts, including lease agreements, specifying procedural requirements for their formation or termination and supplying certain substantive mandatory terms or default principles as necessary.

The Code on Zoning and Construction (*İmar Kanunu*) establishes the rules governing construction, including zoning requirements and the various licences and permits necessary to construct and occupy buildings.

The Code on Land Registration (*Tapu Kanunu*) governs the registration and record keeping of real estate.

Under the general framework established by the foregoing fundamental laws, there are more detailed codes and regulations addressing more specific areas of law. The most frequently cited of these in recent years has been the Urban Regeneration Law (*Kentsel Dönüşüm Kanunu*), as well as the Capital Markets Board's respec-

tive communiqués on Real Estate Investment Companies (*Gayrimenkul Yatırım Ortaklıklarına İlişkin Esaslar Tebliği*) and Real Estate Investment Funds (*Gayrimenkul Yatırım Fonlarına İlişkin Esaslar Tebliği*).

1.2 Main Market Trends and Deals Urban Regeneration

The urban regeneration campaign has continued over the past 12 months in the western region of Turkey, which sits on an active earthquake zone, with the goal of replacing weak buildings with earthquake-resistant buildings. The past year has witnessed the continuation of a flurry of residential projects almost developed by Turkish developers that were made possible by the Urban Regeneration Law. These projects tend to be small or medium-scale works, with each individual project often concerning no more than a single residential building, but these projects have covered virtually all of Istanbul with multiple new ongoing constructions on nearly every block in the downtown area.

Statistics

Despite the difficulties arising from the COVID-19 pandemic, Turkey has managed to maintain its sound position in the real estate market over the past 12 months.

According to the official statistics declared by the Directorate of Strategy Development, General Directorate of Land Registers, the number of real estate sales in 2020 increased by approximately 14.5% compared to the previous year, amounting to 2,678,074 sales in total. However, the number of houses sold to foreigners decreased by 10.3%, with 40,812 sales, which is still a substantial number.

The depreciation of the Turkish lira and increasing demand in the real estate market resulted in a considerable rise in residency prices as well. The Housing Price Index surged by 30.3% at the

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end of 2020. In order to support the real estate market, three major public banks ran a mortgage campaign with an interest rate below the rate of inflation, which was then emulated by major private banks. This financing campaign seems to have had a booster effect on the market.

Impact of COVID-19

Tenants

The negative impact of COVID-19 was mostly experienced by tradesmen and retailers who are tenants, especially those running street cafes, restaurants, and shops in malls. As the mandatory curfews imposed by the Turkish government forced these businesses to shut down for significant periods, the tenants were unable to generate income. Many of them therefore applied to the courts requesting rent-free periods or rent adjustment based on the hardship provisions of the Turkish Code of Obligations, and while some courts have recognised their right to a discount in rent due to COVID-19, most of the cases are still pending. Most landlords of street restaurants and cafes, and shops in malls were forced to cut rent, while some were unable to demand any rent at all.

Workplace

COVID-19 not only brought hard times for tenants but also resulted in a reconsideration of the concept of the workplace. Within this context, the demand for shared offices in Turkey rose dramatically. In order to meet the increased demand, some existing (conventional) offices were converted into shared offices.

Additionally, it has been observed that over the past 12 months built-to-suit projects have retained their popularity among foreign investors looking for the long-term lease of production facilities with tailor-made design standards in organised industrial zones.

Exchange rate

Finally, the unexpected recent fluctuation in foreign exchange rates against the Turkish lira (TRY) is likely to trigger non-performing loan (NPL) sales secured by properties in the near future.

1.3 Impact of Disruptive Technologies

Although lagging behind its peers, the real estate sector in Turkey has recently begun to benefit from technological developments in a more efficient way.

The number of online platforms bringing together supply and demand in the real estate market has been increasing, and existing platforms are gaining more power by adopting new features, such as API (Application Programming Interface). Also, some real estate agencies have declared that they will be accepting bitcoin as a payment method for purchases. Interestingly, a famous Turkish businessman announced that he is working on a “real estate coin project” in Istanbul that will enable investors to buy coins that are backed by real estate. Considering that Turkey is the country in Europe that uses cryptocurrency the most, it is expected that cryptocurrency will become more popular in the Turkish real estate sector over the next 12 months.

1.4 Proposals for Reform

Development of Online Platforms

As of 2019, individuals willing to carry out transactions before land registries can submit all of the required documents to an online land registry platform (webtapu) so that officials can examine such documents in advance and request missing documents, if any. Right-holders can also grant proxies through the online platform. Additionally, it has been announced by the General Directorate of Land Registers that individuals will be able to get hold of more comprehensive information in the near future regarding the land in question, thanks to another platform

(MAKS). Through this, people will be able to see, among other things, information regarding the lessee, any geographical risks that the land is exposed to and other annotations attached by the government authorities. However, it is still a requirement to be physically present at the relevant land registry office and to sign the relevant documents in the presence of land registry officials to consummate transactions. The sector would no doubt benefit immensely should individuals be given the opportunity to consummate transactions relating to the transfer of title, the establishment and cancellation of pledges, and the attachment and cancellation of annotations, through the online platform, which would also address many problems that occurred throughout the COVID-19 pandemic (when many title deed registry offices suffered shut-downs or reduced work hours due to the virus, causing delays in many transactions).

Possible House Tax Reform

Another reform might be contemplated with regards to the valuable house tax, which has been applicable since 2021 and has had a discouraging effect on investors. This new tax provides that the owners of valuable residences, the tax value of which is over a certain threshold (TRY5,227,000 for 2021), must pay taxes ranging from 0.3% to 1% based on the tax value of the residence. Although the legislation sets forth certain exemptions (persons owning a single residence, etc), cancellation of this tax would particularly incentivise foreign investors. The legislation imposing such tax was enacted in 2020 but its implementation was postponed until 2021 due to the negative reaction of the real estate sector. However, it is now in effect and there is currently no sign of a step back.

Specific Lease Regime

In addition to the above, it appears that a lease regime specific to offices and shops may be introduced. The current regime under the Turk-

ish Code of Obligations mostly aims to provide protection to tenants; however, such protection does not always fit office and shop leases, which often results in outcomes beyond its purpose. Based on sector reactions, the application of some “protective” provisions under the Turkish Code of Obligations was postponed for eight years when the Turkish Code of Obligations came into force on 1 July 2012 for merchants and private and public legal entities. As the eight-year period expired on 1 July 2020, said provisions then became applicable to merchants and private and public law entities. These provisions could become burdensome on both tenants and lessees of workplaces. Lease agreements for the shops in malls in particular require a more flexible, freedom-of-contract-based approach. An amendment providing such approach would be appreciated by the sector, but there does not appear to be any such endeavour by the government authorities for the moment.

Real Estate Sales to Foreigners

Finally, it would be beneficial to the Turkish real estate sector if houses sold to foreigners qualified as imports. This has been evaluated by the government on different occasions, but has never been realised.

2. SALE AND PURCHASE

2.1 Categories of Property Rights

Simple Freehold Ownership

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; more limited property rights can be created by carving out certain of these rights from simple freehold ownership.

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Leasehold Ownership

Turkish law permits granting a third party the right to build on a piece of property (*üst hakkı*), and the holder of such a right becomes the owner of any structures that are built on this land in exercise of this right. If the right to build is intended to be independent and indefinite (*bağımsız ve süreklil*), then the holder of the right can register it in the land registry as a separate property interest, and this right is essentially treated no differently from independent real estate.

Condominium Ownership

Turkish law also recognises condominium ownership, which allows 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 with the owners of the other independent units in the building.

Usufruct/Servitude Right

Under Turkish law it is also possible to separate the right to use and to benefit from a piece of property, from the right to disposal, and the complete right of use and benefit can be granted to a third party, in what is called a usufruct/servitude right (*intifa/irtifak 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. Granting usufruct right to a third party leaves the property owner with the sole right of disposal.

2.2 Laws Applicable to Transfer of Title

Transfer of title is governed by:

- the Civil Code, insofar as it defines the extent of the interest that is transferred;
- the Code on Land Registration, which regulates the procedures to be followed for the transfer and introduces restrictions against,

and specific clearance requirements for, foreign ownership of real estate; and

- the Turkish Code of Obligations, which supplies the rules and background principles governing sales agreements.

There are no specific laws that govern transfers of real estate by type of use: residential property and commercial property alike are transferred under the same rubric. However, specific procedures have been put in place that determine the alienation of property rights held by the government, such as by way of usufruct.

2.3 Effecting Lawful and Proper Transfer of Title

Real estate transfers are given effect at the time they are registered at the Land Registry Office, which provides a definitive record of real estate ownership rooted in the Ottoman land registry system. Land records are kept in duplicate in the central database in Ankara and at the local land registry office. These records are open to the public, and are reliably accurate.

Transfers of title must be recorded in order to gain effect. Similarly, all interests in real property, including mortgages, usufruct rights, rights of purchase and repurchase, must all be registered to ensure validity.

Given the definitive authority carried by title records, which are open to the public for inspection, title insurance is not at all prevalent, with virtually no risk to insure against.

2.4 Real Estate Due Diligence

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 particular locality. As the land registry records are authoritative, a thorough inspection of these public records generally suffices to

provide assurance to purchasers. Additionally, technical consultants are appointed for environmental and technical due diligence matters. Buyers' approach to real estate due diligence exercises did not seem to change during the COVID-19 pandemic, but these exercises are generally conducted off-site.

2.5 Typical Representations and Warranties

The types of representations and warranties given in real estate sales differ significantly depending on how the sale is structured. Asset sales typically entail very limited representations and warranties, given that comprehensive and definitive information about the encumbrances on land, including granted easements, established security, and pre-emptive rights are all revealed in public records. On the other hand, if the deal is structured as a share sale, with the entity holding the asset changing hands rather than the underlying asset itself, extensive representations and warranties are generally demanded.

Environmental representations and warranties are occasionally demanded but are seldom granted.

2.6 Important Areas of Law for Investors

Real estate law sits at the crossroads of constitutional law, private law and administrative law. As noted above, property rights are guaranteed by the constitution and international treaties. At a more local level, the most important area of law for a purchaser to keep in mind is property law, given that it determines the rights and obligations conferred to owners of real property. The law of obligations is also important, in that it defines the rules and principles governing contracts related to real property (sale agreements, lease agreements, etc). Next, zoning law should be kept in mind, as this determines the uses to which real estate can be put. A purchaser

should also be mindful of secondary rules governing the issuance of construction and usage permits. Finally, land registration laws are also fairly important, given that they determine what information about real property can be gleaned from land registry records.

2.7 Soil Pollution or Environmental Contamination

The obligation to comply with environmental regulations is generally imposed on owners of real property rather than the property itself. As such, a buyer of real property is in principle not responsible for any contamination that has taken place prior to their taking ownership. However, the fact of contamination may carry with it the presumption that the current occupant has caused the contamination, and in such an event the occupant may need to defeat that presumption by proving that it was an earlier owner who caused the pollution. This is one area where due diligence findings may prove useful.

2.8 Permitted Uses of Real Estate under Zoning or Planning Law

A buyer can ascertain the permitted uses of a parcel of real estate by consulting the zoning plans, plan notes for the concerned plot and zoning legislation. The zoning plans concerning each locality contain specific instructions on how each parcel may be developed or used; these instructions reveal both the general plan for the use of land in the locality and indicate how each parcel fits into the whole.

It is generally not possible to alter zoning restrictions for particular parcels on a project basis through agreements with local zoning authorities.

2.9 Condemnation, Expropriation or Compulsory Purchase

Turkish law permits the government to take land in cases of public need. The transfer can either

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take place voluntarily, or the government can file suit to condemn a piece of private property and in due course assume ownership.

Voluntary transfers can be in exchange for cash or for another piece of government-held property.

If the parties cannot come to an agreement on the consideration for a voluntary exchange, the government can file suit to establish the value of the land to be condemned. In a condemnation suit, the court appoints an expert to establish the value of the land to be condemned, and the parties can contest the experts' valuation in open court. The court then establishes the value of the land, and upon payment of this sum, orders the registration of the land in the name of the condemning agency. The condemnation compensation may be split into instalments, and if this is ordered, then registration may begin after the payment of the first instalment.

In practice, developed land is rarely condemned.

2.10 Taxes Applicable to a Transaction

Transfers of real estate through asset deals are subject to title deed registration fees, VAT and income tax. Share sales are subject to VAT and capital gains taxes. However, VAT, income tax and capital gains tax are subject to exemptions that are relatively easy to satisfy.

Title Registration Fees

Title registration fees of 4% of the value of the asset are assessed on sales of real estate by asset sale. These fees are generally split equally between the parties.

VAT

If the seller is a legal entity, VAT is assessed on the transferred property at 18% for office space and commercial property, and at 1%, 8%, or 18% for residential property, depending on the

total square metres and/or the value per square metre.

Capital Gains Tax

Finally, income tax is assessed on the selling asset holder. For individuals, the applicable rate is between 15% and 40%, but capital gains tax is not assessed on individuals who are not professionally engaged in the trade of real estate and who have held the sold property for five years or longer. For corporations, the capital gains tax rate is 20%, but corporations that do not engage professionally in the trade of real estate can shield 50% of the income from such a sale, as long as the proceeds are retained in the company coffers.

Exemptions

In share sale transactions, VAT and capital gains, tax exemptions apply as long as the transferred shares have been held by the selling entity for two years or more. Share purchase agreements are exempted from stamp tax, with a recent change in the law.

2.11 Legal Restrictions on Foreign Investors

Foreign legal entities may not acquire real property in Turkey unless they are allowed to do so under special laws, such as the Petroleum Law, Tourism Law or the Industrial Zones Law. To overcome this legal barrier, investors often choose to establish Turkish SPVs. Turkish-incorporated companies with 50% or more foreign share ownership and/or management control are subject to approval by the governorship before they can acquire real property in Turkey. Turkish-incorporated companies in which the foreign ownership is under 50% and management is not under foreign control, can acquire real property just like domestic concerns where all shareholders are Turkish nationals.

The governorship approval procedure involves an investigation of whether the real property is in a military forbidden zone, military security zone, strategic zone, or in a private security zone. If it is, then the acquisition is subject to clearance from the military or the provincial police directorate, depending on which of these exercises jurisdiction over the relevant sensitive area. If not, approval for the acquisition is routinely granted. The process is completed within approximately one month. Establishment of mortgages in favour of foreign capital companies, leases of real property by foreign capital companies, and acquisition of real property in organised industrial zones, technology development zones and free zones are not subject to the foregoing approval process.

3. REAL ESTATE FINANCE

3.1 Financing Acquisitions of Commercial Real Estate

Acquisitions of commercial real estate are generally financed by loans and sale revenue generated from the project. Real estate investment funds, lease certificates and real estate investment companies are capital market instruments used for financing options for acquisitions of large real estate portfolios or companies holding real estate.

3.2 Typical Security Created by Commercial Investors

There is no security specifically used by commercial real estate investors. Generally, securities such as a mortgage, share pledge, personal guarantee, assignment of receivables, etc, are used for real estate-related funding.

Mortgages

Two types of mortgage are recognised under Turkish law: the principal amount mortgage and the maximum amount mortgage.

Principal amount mortgages

Principal amount mortgages are established to secure amounts that have already been lent to borrowers, and contain the unconditional and absolute debt acknowledgement of the borrower. Although the amount of the mortgage only shows the principal amount of the loan lent, the lender may request:

- the principal amount;
- foreclosure expenses and default interest;
- accrued contractual interest; and
- expenses incurred by the mortgagee(s) that were mandatory to preserve the value of the mortgaged property (including disbursement of insurance premiums that were the mortgagor's responsibility).

Maximum amount mortgages

The maximum amount mortgage secures an amount that is higher than the principal amount, incorporating in advance various expenses that may be incurred by the mortgagee, and do not permit the collection of any amounts above the ceiling amount.

Other Structures Available

Sale-and-leaseback structures can also be used in acquisitions of commercial real estate. Finally, Islamic finance-designed instruments such as sukuk may also be utilised.

3.3 Restrictions on Granting Security over Real Estate to Foreign Lenders

Securities are granted over real estate to foreign financial institutions without any restrictions. Repayments to a foreign lender under a security document or loan agreement are made without any restriction unless repayment constitutes a criminal act (eg, money laundering).

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3.4 Taxes or Fees Relating to the Granting and Enforcement of Security

Stamp tax (0.94% of the amount subject to mortgage), and a mortgage fee (0.45% of the amount subject to mortgage) are paid for the establishment of a mortgage. Foreign financial institutions are exempted from taxes and fees arising out of securities granted over real estate.

The fee for enforcement proceedings is approximately 0.5% of the amount subject to mortgage.

In accordance with a recent change in the legislation, there is now an exemption for half of the mortgage fee (0.225%) for mortgages established between traders.

3.5 Legal Requirements Before an Entity Can Give Valid Security

Under Turkish law, it is prohibited for a target company to provide funds, loans, securities or guarantees to a third party to facilitate the acquisition of its own shares, and such financial assistance transactions will be deemed null and void. This provision does not apply to (i) transactions conducted for the purpose of activity of financial institutions, and (ii) securities, advance payments and loans granted to employees of the target company or its parent company in order to acquire the shares of the company.

When granting upstream security or guarantees for a parent company, it may be difficult for board members to specify a convincing reasonable cause for the subsidiary to enter into such an arrangement to the benefit of its holding company or group companies.

3.6 Formalities When a Borrower Is in Default

Under Turkish law, the creditor beneficiary of a mortgage must initiate an execution proceeding to liquidate the mortgage. Priority between claimants is listed as an obligatory rule of the

applicable law. By law, a creditor beneficiary of a mortgage has priority over other creditors, with respect to mortgaged property.

An accelerated foreclosure procedure exists for principal amount mortgages and mortgages granted in favour of banks and financial institutions.

3.7 Subordinating Existing Debt to Newly Created Debt

In principle, the order of priority between creditors is regulated under the applicable law and contractual subordination is not expressly regulated under the law. According to Court of Appeals precedents, execution and bankruptcy rules relate to public policy and cannot be changed contractually. Accordingly, a subordination agreement is not enforceable against an execution office. However, parties may freely undertake to pay the respective amounts to other recipients upon collecting receivables. In summary, a subordination arrangement may create a contractual obligation on the part of the parties, but will not have a preventative effect during any enforcement proceedings to be initiated before execution offices.

3.8 Lenders' Liability under Environmental Laws

Under the applicable law, polluters must bear all expenses for preventing, removal and cleaning of pollution. Applicable law requires that – where environmental pollution is a possibility – the parties must take the necessary measures in order to prevent pollution, and if pollution occurs, they must take the required actions in order to stop the pollution or decrease the effects of the pollution. The same law explicitly states that polluters have strict liability with respect to environmental pollution. Therefore, lenders holding or enforcing security over real estate should not be liable under environmental laws, as any pollution of

the real estate is regarded as being caused by the borrower.

3.9 Effects of a Borrower Becoming Insolvent

In principle, securities established in favour of a lender are not voided by a borrower's insolvency. However, securities guarantee the creditors' position in such cases.

Declaration of Bankruptcy

In the event of a borrower's insolvency, creditors can ask a court to declare the bankruptcy of the borrower. Bankruptcy results in the total liquidation of a bankrupt entity's assets and the satisfaction, pro rata, of its creditors. An important exception to this rule is mortgagees: as their receivables are guaranteed by specific security, bankruptcy rules require that they be repaid first, in full, before other, unsecured creditors.

Composition of Debts

On the other hand, when borrowers become insolvent, they can seek bankruptcy protection in the form of composition of debts. Under this device, debtors reach an agreement with their creditors regarding the extent of the deduction to be made in outstanding debts and the deferment of payments. Mortgagees are given exceptional rights under the composition of debts mechanism as well: even under the composition regime, mortgagees may initiate proceedings for the sale of mortgaged assets to have their debts repaid, but may not realise the eventual sale of the secured asset while the protection is in place.

Another device of bankruptcy protection that used to be available, but which is no longer permitted, was the deferral of bankruptcy, which was imposed by a court upon the application of the debtor. The shift to a composition regime from a deferral of bankruptcy regime is a positive development, in that it promotes agreement

between debtors and creditors rather than a court imposing a solution in its own judgment.

3.10 Consequences of LIBOR Index Expiry

The market may adapt to the new situation by setting forth a new benchmark rate, such as EURIBOR, in credit arrangements. A fall-back clause referring to another alternative benchmark rate may be used as well. At present, parties may revise their agreement to adapt to the new situation by mutual agreement. The bottom line would be that the courts would determine and refer to a new interest rate benchmark, upon appeal of the parties, in the event of any dispute.

4. PLANNING AND ZONING

4.1 Legislative and Governmental Controls Applicable to Strategic Planning and Zoning

Zoning plans must comply with the applicable legislation and, more specifically, with the planning principles, urbanisation principles and public interest, such as regional requirements, transportation opportunities, etc. This implies legislative control over zoning plans.

Moreover, smaller-scale zoning plans must comply with larger-scale zoning plans (hierarchy of zoning plans). Larger-scale zoning plans (spatial strategic plans, environmental plans) are enacted by ministries, whereas smaller-scale zoning plans (implementation zoning plans) are enacted by local municipalities. This implies central administration's control over local authority.

4.2 Legislative and Governmental Controls Applicable to Design, Appearance and Method of Construction

Construction permits should be obtained from the municipality for any new construction, refer-

bishment or major modification. The construction permit and design documents should be in accordance with the legislation and zoning plans. The legislation defines detailed technical requirements for design documents. Additionally, various requirements and restrictions (eg, setback distances, ratio of footprint to parcel area, construction co-efficient) are also regulated under zoning plans.

Oversight is conducted by the authority issuing the construction permit (eg, the municipality).

4.3 Regulatory Authorities

Zoning plans regulate the permitted use and development of individual parcels of real estate. Environmental zoning plans are enacted by the Ministry of Environment and Urban Planning. General functions (business, residential, etc) of regions are regulated under environmental zoning plans. Implementation zoning plans are enacted by municipalities, and specific zoning conditions (eg, construction co-efficient, maximum height, set-back distances, etc) are specified. Accordingly, function restrictions (residential, industrial, etc), set-back distances, construction co-efficient and maximum height are typical conditions and restrictions regarding the development of projects. Moreover, there are restrictions connected to the special status of respective lands (forest, cultural heritage, natural heritage, etc).

In addition, the Housing Development Administration also exercises planning authority in certain specific, government-subsidised housing development zones that are placed under its jurisdiction.

Finally, the Ministry of Tourism and Cultural Heritage also exercises approval authority in zones of cultural heritage.

4.4 Obtaining Entitlements to Develop a New Project

The procedure for obtaining entitlements to develop a new project or complete a major refurbishment is as follows:

- an initial application is made to the municipality to obtain a zoning status certificate;
- official designs (projects) are prepared by architects and engineers according to the conditions stated in the zoning status certificate;
- these official designs (projects) are submitted to the municipality, along with other documents required for a construction permit application; and
- the municipality approves the official designs (projects) and issues the construction permit.

The application procedure generally takes one to three months, depending on the time spent drafting official designs (projects). Municipalities generally issue construction permits within one to three months.

Third parties do not directly participate in the construction permit procedure. However, affected third parties may submit an official letter to the municipality for revocation of a construction permit, within the scope of the general right of petition. This application does not affect the validity of the construction permit.

4.5 Right of Appeal Against an Authority's Decision

Under Turkish law, as a constitutional principle, all administrative decisions are subject to judicial review. Thus, an affected party may file an administrative lawsuit to declare the administrative act null and void or to claim damages. Property rights-holders may challenge the denial of construction permits, unfavourable revisions to zoning plans and parcellation plans, or any other administrative act. In addition, affected third par-

ties (neighbours, etc) may initiate a lawsuit for cancellation of a construction permit.

4.6 Agreements with Local or Governmental Authorities

It is not necessary to enter into agreements with local or government authorities to develop a project. Zoning plans grant the right to undertake construction under the conditions specified in the zoning plan, and no further agreement with the municipality is necessary to exercise that right. Construction requires the obtainment of a construction licence, which is not an agreement per se, but rather an administrative approval process.

Agreements may be necessary in an ancillary fashion, such as contractors needing to subscribe to utilities for consumption during the construction phase. Additionally, developers need to appoint licensed construction audit companies.

4.7 Enforcement of Restrictions on Development and Designated Use

If the planned construction does not comply with zoning conditions and designated use, the municipality will not issue a construction permit. Moreover, if the planned activities do not comply with designated use, it is not possible to obtain an operation permit.

5. INVESTMENT VEHICLES

5.1 Types of Entities Available to Investors to Hold Real Estate Assets

Special purpose vehicles (SPVs), real estate investment trusts (REITs) and real estate investment funds (REIFs) are the types of entities that are available to investors to hold real estate assets. REITs and REIFs are preferred by real estate investors due to tax exemptions granted to such entities. REITs and REIFs are also

preferable because these entities may create large-scale funds generated from the capital contributions of different investors. SPVs may also be advantageous as they are not subject to the restrictions and specific conditions stipulated under capital market legislation, such as valuation conducted under said legislation, etc. For this reason, SPVs are commonly used in practice.

5.2 Main Features of the Constitution of Each Type of Entity

SPVs may be incorporated as a limited liability company or a joint stock company in the form of a publicly or privately held company. REITs may be incorporated as a joint stock company in the form of a publicly held company. REIFs do not have any legal personality and may only be held by qualified investors.

5.3 Minimum Capital Requirement

The minimum capital amount for a REIT is TRY30 million, and TRY100 million for REITs incorporated for infrastructure purposes.

The minimum asset pool for a REIF should be TRY10 million within one year of initiating the sale of participation shares to qualified investors.

Joint stock companies should be incorporated with a minimum capital amount of TRY50,000; one quarter of which should be paid at the time of incorporation and the rest should be paid within 24 months of incorporation of the company.

Limited liability companies should be incorporated with a minimum capital amount of TRY10,000; there is no minimum payment requirement at the time of incorporation and the total capital amount should be paid within 24 months of the company's incorporation.

5.4 Applicable Governance Requirements

Corporate law provisions are applied to SPVs as they are subject to the Turkish Commercial Code, including the capital maintenance rule, corporate benefit, etc. REITs are also subject to corporate law requirements stated under the Turkish Commercial Code. REITs and REIFs are also subject to capital market regulations as they make use of funds provided by investors.

5.5 Annual Entity Maintenance and Accounting Compliance

The amount depends on the type and size of the investment.

6. COMMERCIAL LEASES

6.1 Types of Arrangements Allowing the Use of Real Estate for a Limited Period of Time

Lease

A lease is the basic type of arrangement that allows a person, company or other organisation to occupy and use real estate for a limited period of time without buying it outright.

Right of Construction

A right of construction may also be established as a type of right in rem in order to protect the owner's right against third parties. In practice, a right of construction is preferable to other types of use of real estate due to the fact that it gives property rights to the holder of the right of construction for a period of time. A mortgage may also be established over a right of construction as it is independently registered in the title deed registry with separate ownership rights.

Usufruct

Another type of right in rem is the usufruct right, which entitles the right-holder to use and benefit from real property to the fullest extent. The usu-

fruct right is a right granted to a specific person and may not be transferred. It is a right that is limited in time; usufruct rights granted to legal persons are limited to 100 years, and usufruct rights granted to natural persons are limited to the grantee's lifetime.

6.2 Types of Commercial Leases

There are no different types of commercial leases. All lease agreements are governed by the same regulation. However, leases may be classified as a ground lease or a building lease according to rental conditions.

6.3 Regulation of Rents or Lease Terms

Rentals are freely negotiable under lease agreements. However, certain lease terms, such as eviction, rent increase, etc, are specifically regulated under the Turkish Code of Obligations as mandatory terms.

Turkish Code of Obligations

The application of some of these mandatory terms was postponed for eight years when the Turkish Code of Obligations came into force on 1 July 2012 for merchants and private and public legal entities. As the eight-year period expired on 1 July 2020, said provisions became applicable to merchants and private and public legal entities as well. Such provisions are mostly considered as protecting tenants against landlords, which provides certain limitations with regard to the lease agreement. The most prominent ones, for instance, stipulate that obligations regarding additional payments other than rent and ancillary costs cannot be imposed on tenants, and penalty clauses for failure to pay and acceleration clauses will be deemed invalid.

A recently enacted piece of legislation prohibits denominating rentals in foreign currency under certain conditions. This legislation applies to lease agreements where the lessor is a foreign capital company, but it is still possible to

denominate rents in foreign currency in lease agreements where the tenant is a foreign real person, foreign company or a company owned by foreign investors.

Counteracting COVID-19

In order to curb the adverse impact the COVID-19 pandemic may have had on tenants, government authorities have put a series of measures into effect. The first of such measures was to suspend the enforcement procedures that remained in force between 22 March 2020 and 15 June 2020 by enacting Law No 7226. In addition to this, pursuant to the same law, landlords were not able to terminate lease agreements for offices or evict the tenants of offices due to failure to pay rent during the period between 1 March 2020 and 30 June 2020. This measure did not prevent the default of tenants but merely provided relief to them for the period mentioned. Landlords were able to terminate and/or evict tenants due to failure to pay rent after 30 June 2020.

Finally, a rental support programme was promulgated through Presidential Decision No 3323 on 23 December 2020. According to this Decision, small businesses and tradespeople were granted a three-month period of office rental support ranging from TRY500 to TRY750 depending on whether their workplace is located on the outskirts or in the centre of metropolitan municipalities.

Government bodies also declared that they would not collect rent from tenants who had shut down their businesses during the pandemic. Most recently, a significant example of this approach was seen when the Ministry of Transportation and Infrastructure announced that airports would not be required to pay rent for 2020 and will get a 50% discount on their rent in 2021 and 2022.

6.4 Typical Terms of a Lease

There is no minimum or maximum limit for lease terms. In practice, the terms of leases are contractually agreed as ten to 30 years.

Structural maintenance should be carried out by the owner of the real estate, and daily maintenance should be carried out by the lessee. Parties may contractually agree otherwise.

Frequency of rent payments is mostly agreed by the parties as monthly; the term of rent may also be determined by the parties as quarterly or annually.

In commercial leases, rental may be expressed as a fixed amount or as a fixed percentage of revenues derived from the use of the property. Market practice tends to combine the two, with payable rent being set at whichever of the two is higher.

It is also customary to introduce force majeure clauses in lease agreements. Before the COVID-19 pandemic, most force majeure provisions addressed the risk of leased property being damaged by an act of God, in which case, the lessor is relieved from its duties to keep the property in operable condition. Now that the market has suffered the effects of the pandemic, lease agreements entered into recently include pandemics as a force majeure event to the extent that they preclude the tenant from using the leased property.

6.5 Rent Variation

As per the Turkish Code of Obligations, if the rent is agreed in Turkish lira, the rent may be increased according to the consumer price index (12 months' average), but no higher. Rent may not be increased within the first five-year period if the rent is agreed in foreign currency.

6.6 Determination of New Rent

If the parties fail to mutually agree on a new rental amount, either of the parties can apply to the court to render a new rental amount according to the market price at the end of each five-year lease term.

6.7 Payment of VAT

If the lease property is part of a commercial enterprise or owned by a limited liability company/corporation, VAT is applicable, at 18% of the rent. Withholding tax is applicable to commercial entities for leases of natural person-owned real estate.

6.8 Costs Payable by a Tenant at the Start of a Lease

A commission to the real estate agency and a deposit to the real estate owner are generally paid by the tenant at the start of a lease, as per the current market practice.

6.9 Payment of Maintenance and Repair

Areas used by several tenants, such as car parks, gardens or swimming pools, are classified as common areas, and expenses arising out of usage of these areas are divided among tenants according to certain criteria (eg, land share, square metre-size of property).

6.10 Payment of Utilities and Telecommunications

If the building housing the premises has been converted to condominium use, then each tenant is able to obtain individual utilities accounts for their own use. Expenses incurred for common areas are generally allocated among tenants on the basis of square metres of property. Managers of such properties usually reserve for themselves, by contract, the authority to take into account other factors such as the tenant's location within the premises, the extent to which the presence of the tenant generates business

for the facility as a whole, the tenant's business volume, etc.

The allocation of common expenses among tenants in shopping centres is governed by the Regulation on Shopping Centres (*Alışveriş Merkezleri Hakkında Yönetmelik*). The regulation specifies mandatory rules to be used when allocating common expense contribution amounts to tenants in shopping centres. The common expenses are, in principle, allocated according to the square metrage of the respective stores, restaurants, etc.

6.11 Insuring the Real Estate That Is Subject to the Lease

Generally speaking, landlords insure the property against structural risks, and tenants insure the property against operational risks. Landlords also insure the common areas of shared-use properties, and can increase the cost of this insurance depending on the parties' bargaining positions. The law imposes the cost of mandatory insurance on landlords by default, but permits reassignment of these costs.

Landlords typically insure properties against fire, hurricane, explosion, water damage, flooding, landslide, snow damage, aircraft impact and earthquake. Terrorism insurance is also sometimes taken out. A lessee typically takes out a renter's all-risk insurance and also third-party liability insurance.

6.12 Restrictions on the Use of Real Estate

The use of land is regulated under the zoning plan for the locality; these restrictions operate in the background, and supersede any conflicting provisions of any lease agreement that is signed between a landlord and a tenant. Furthermore, under the Code on Condominiums, operation of businesses is prohibited in residential buildings.

Restrictions on a tenant's use of real property are typically found in lease agreements, and these are binding on lessees under contract law.

6.13 Tenant's Ability to Alter and Improve Real Estate

Tenants may alter leased premises if this is permitted under their lease agreement. Structural improvements may require a licence from the local municipality, and these licences are only issued to landowners. As such, a tenant would have to obtain the landlord's consent to structural improvements. Landlords typically give their consent to such improvements by issuing a power of attorney to their lessees for improvement purposes, under which authority, lessees obtain the requisite licence and commence construction of improvements.

Having once consented to alterations to be made by a lessee, a landlord may not demand the return of the property to its previous condition. Similarly, a lessee may not demand compensation for any increase in the value of the property that may be caused by the lessee's alterations. Both of these default positions may be changed by agreement.

6.14 Specific Regulations

There are very few regulations that govern the lease of property by type of use. One such specific set of rules, the Regulation on Shopping Centres, has had little restrictive impact in practice.

6.15 Effect of the Tenant's Insolvency

A lessee's bankruptcy during the term of a lease gives the landlord the right to demand assurances for payment of rentals to fall due in the future. If the lessee or the bankruptcy administrator is not able to provide such assurances, the landlord is then entitled to terminate the lease.

6.16 Forms of Security to Protect against a Failure of the Tenant to Meet Its Obligations

Landlords typically demand that tenants guarantee their obligations by posting a cash deposit or a bank letter of guarantee. The Turkish Code of Obligations has introduced a quantitative limitation in this respect, limiting the amount of such guarantees to be posted, to three months' rent at maximum, but this provision will not take effect until July 2020. Until that time the amount of the deposit can be decided between the parties to the lease. In any event, landlords tend to demand annual or quarterly payment of rent to obtain further security.

6.17 Right to Occupy after Termination or Expiry of a Lease

A tenant has the right to occupy leased premises for another 11 years after the end of a lease period. The landlord may terminate the lease by giving notice no less than three months before the end of the 11th year after the expiration of the lease, or each year thereafter. This is a mandatory provision of the law, and landlords therefore do not have a free hand in circumventing this entitlement given to lessees.

6.18 Right to Assign a Leasehold Interest

Assignment is subject to the lessor's prior written consent, which cannot be withheld unreasonably in respect of workplace leases.

Subleases are also subject to the original lessor's prior written consent.

6.19 Right to Terminate a Lease Landlord's Rights to Terminate

The landlord may terminate a lease if the lessor has served written notice on the lessee twice in one lease term for failing to pay rent.

The landlord may terminate a lease if the lessee has undertaken to vacate the leased premises on a certain date but has failed to keep its promise.

The landlord may also terminate a lease on the basis of need: if the landlord or the landlord's family must use the leased premises themselves, then the landlord may terminate the lease. Similarly, the landlord may terminate the lease if material repairs need to be made to the premises and the lessee's continued occupation of the premises under such circumstances is not possible.

Finally, the landlord may terminate a lease if the lessee fails to use the premises in accordance with the terms of the lease agreement. If the lessee's breach is non-material the landlord must give at least a 30-day cure period; if the breach is material and the breach is unlikely to be remedied in the cure period, the agreement may be terminated with immediate effect.

Tenant's Right to Terminate

The lessee may terminate the agreement in the event that the premises are materially unfit for use.

Both Parties' Right to Terminate

Both parties may terminate the lease if generally applicable contract termination grounds arise.

6.20 Registration Requirements

Lease agreements are not subject to any form requirement, but written lease agreements are market practice. Turkish law enables the annotation of lease agreements in the land registry records of the leased property. Annotation gives full protection against eviction if the relevant property is transferred to a third party. Deed registry fees amounting to 0.68% of the total lease amount would accrue together with a fixed contribution amount (approximately TRY400).

6.21 Forced Eviction

A tenant may be evicted prior to the originally agreed date if the grounds for termination discussed above (**6.19 Right to Terminate a Lease**) arise. In such an event, eviction proceedings typically take one to one-and-a-half years.

In the event of eviction for failure to pay rent, a landlord may also seek to have the tenant evicted by way of execution proceedings. The execution office would serve a payment order on the tenant in such a case and, upon failure to pay within 30 days, begin the process to evict. This procedure is notably faster than eviction by court order.

Both eviction processes may be subject to appeal and the eviction order can be suspended while the appeal is pending.

COVID-19 Remedies

During the COVID-19 pandemic, two different provisional articles were introduced for tenants to enjoy for certain periods. The first provisional article suspended all execution proceedings, including those initiated against tenants, for the period between 22 March 2020 and 15 June 2020. The second provisional article, specifically addressed to tenants of offices, provided that landlords could not terminate the lease agreement or evict tenants based on their default for the period between 1 March 2020 and 30 June 2020. These provisional articles only suspended the remedies landlords could invoke, but did not bring tenants an exemption from paying their rent.

6.22 Termination by a Third Party

A government agency may be able to terminate a lease only in exceptional circumstances. One such instance may be when the leased real estate is subject to condemnation. In the event of condemnation, the lessee does not receive compensation from the government. Another

such instance is if the leased property is going to be subject to demolition under the scope of the Urban Regeneration Law: in such an event, a lessee would be given a total of 90 days to evict the premises, and would be evicted by the government upon failure to voluntarily surrender the property.

7. CONSTRUCTION

7.1 Common Structures Used to Price Construction Projects

Structures used in the global market (turnkey and cost-plus-profit) are also used in the Turkish market. Turnkey structures are commonly used in public tenders. For private deals, turnkey or cost-plus-profit structures may be used depending on the commercial agreement of the parties.

Moreover, a unique method that is commonly used, which has been created for construction to be made over private parties' land, is known as "construction in return for flat". Under this structure, the contractor constructs the building without receiving any cash payment. The owner makes the payment to the contractor in the form of a flat or flats; accordingly, the owner and contractor share the flats in the constructed building, in line with a ratio determined under the agreement (eg, owner 55%, contractor 45%). The owner does not make any other payment for the construction.

Revenue sharing, which is a structure that resembles partnership, has been gaining traction in the market lately. Revenue sharing involves the contractor taking on the construction and sale activities, and the landowner and the contractor sharing the collected revenues in previously agreed ratios.

7.2 Assigning Responsibility for the Design and Construction of a Project

Contractors assume the responsibility and construction of a project through construction agreements. However, as per the Turkish Code of Obligations, owners are responsible vis-à-vis third parties. In the event that owners are required to pay any compensation to third parties, they are entitled to have recourse to their contractor.

At the contractor level, design and construction work is outsourced through subcontractors that are hired by contractors.

7.3 Management of Construction Risk

Contractors generally assume the construction risk on a project, thus limitation of contractors' liability is not very common. Moreover, clauses containing waivers, indemnifications and limitations of liability in favour of contractors are not generally applied by courts.

7.4 Management of Schedule-Related Risk

Provisions on schedule-related risks are subject to freedom of contract; therefore, parties may agree on certain milestones and penalties. This is commonly used in practice. As per the law, an owner is entitled to compensation if the contractor does not comply with the milestones and deadlines specified under the agreement.

7.5 Additional Forms of Security to Guarantee a Contractor's Performance

Parent guarantees, performance bonds (bank letters of guarantee), and retentions are common securities given by contractors. Requesting guarantees from contractors is common for valuable lands, where owners have negotiating power.

Another method that is often used in the tranches, but not necessarily in high-profile construc-

tion projects, is the exchange of negotiable instruments (eg, bonds or cheques). While negotiable instruments are ordinarily used to settle outstanding debts, they are sometimes used as security in construction agreements.

7.6 Liens or Encumbrances in the Event of Non-payment

Contractors are entitled to request the registration of a mortgage over the land to guarantee their receivables. Owners may request removal of the mortgage upon fulfilling their obligations under the construction agreement.

7.7 Requirements Before Use or Inhabitation

An occupancy permit, certifying that the construction has been completed in accordance with the official designs (projects), should be obtained before a project is inhabited or used for its intended purpose.

8. TAX

8.1 VAT

Sale of lands within the scope of a commercial enterprise and land owned by limited liability companies and corporations are subject to VAT. The generally applicable VAT rate for land sales is 18%.

However, the VAT rate applicable for flats generated from urban regeneration is 1%. The VAT rate applied to sales of flats can be 1%, 8% or 18%, depending on the tax value of the flat concerned.

VAT is paid by the purchaser.

The sale of lands held by limited liability companies and corporations for more than two years is exempt from VAT. However, this exemption does

not apply to limited liability companies and corporations that conduct real estate business.

8.2 Mitigation of Tax Liability

Methods such as division, mergers, share transfers, etc, are used to benefit from mutual tax agreements and exemptions.

Moreover, REIFs and REITs are exempt from corporate income tax. These structures can also be used to mitigate tax liability.

8.3 Municipal Taxes

There is no periodic tax applicable for occupation of business premises. However, a fee determined by municipalities is paid for the obtaining and renewal of operation permits. There is no specific exemption for operation permit fees.

Moreover, a real property tax is paid to municipalities; this is determined by municipalities according to the value of the respective lands. There are no significant exemptions for businesses with respect to real property tax.

8.4 Income Tax Withholding for Foreign Investors

Income generated by foreign investors which are not resident in Turkey is subject to withholding tax (eg, 20% for rental income). Rental income is subject to income tax for real persons and corporate tax for companies. The income tax applicable for real persons varies between 15% and 40%, depending on the rental amount. TRY6,600 (applicable for year 2021) of the rental income from residences is exempt from income tax. Corporate tax is paid over the rental income generated by limited liability companies and corporations. General corporate income tax is 20%.

There is no general tax exemption for income tax and corporate tax accrued over rental income. However, if rental income is generated by a REIF

or REIT, the relevant income is exempt from corporate tax.

8.5 Tax Benefits

Depreciation deductions may be made over buildings, facilities, etc, as per the method and rates determined under the legislation (eg, 2% of the building's annual value). Moreover, expenses incurred for the respective real estate may also be deducted from the income subject to tax.

Additionally, real persons can deduct a flat 15% of the income generated from the lease of real property.

TURKEY LAW AND PRACTICE

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is composed of approximately 150 individuals with a variety of educational and professional backgrounds. The 90-member legal team, 14 of whom are Hergüner partners, is involved in cases that require a full grasp of Turkish and cross-border jurisdictions as well as different cultures and languages. The firm's real estate team advises the world's leading international retailers, real estate funds and developers in Turkey's most famous shopping and residential complexes, urban regeneration projects, and

tourism facilities. In addition to pure real estate transactions, the team also provides permitting and licensing-related advice, and cross-disciplinary input in infrastructure projects along with the firm's infrastructure and project finance team, as every infrastructure project has a real estate leg including both privately owned and government-owned/controlled land. The real estate team also specialises in sophisticated real estate litigation and arbitration, and represents local and international developers and investors before the courts and arbitral tribunals.

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