

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; liability; due diligence; warranties; real estate tax, including VAT and stamp duty/transfer tax; climate change targets; restrictions on foreign ownership; real estate finance; commercial leases; and planning law.

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The Commercial 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?

During the past 12 months, the real estate and construction sectors have been subject to the effects of the novel coronavirus (COVID-19) pandemic and inflation. Housing sales numbers were high in 2020, especially due to the positive effect of low-interest housing loans by public banks. The number of housing units sold in Turkey through to the end of Q3 2020 was 536,000, compared to 396,000 in the same period in 2021.

With increasing vaccination and the lifting of most measures taken against COVID-19, the use of retail units and offices increased in 2021 compared to 2020, even though they have not yet reached their pre-pandemic levels.

Even though the price of goods used in the construction market has increased due to the COVID-19 effect, urban regeneration is still a focus of interest, due to the large number of buildings and infrastructure vulnerable to earthquakes. Under the Urban Regeneration Law, the government has carried out many prominent urban regeneration projects. Ministry of Environment and Urbanisation officials have stated that the government aims to regenerate 1.5 million houses by 2025. To this end, the Ministry of Environment and Urbanisation has introduced the Regulation on Classification and Recording of Building Contractors (published in the *Official Gazette*, 2 March 2020, no. 30702). This classifies building contractors according to their economic, financial, professional, and technical competencies, to ensure compliance with building standards.

The *Central Bank of the Republic of Turkey (TCMB)* has supported credit growth and a considerable reduction in interest rates since 2020, despite inflation and a rise of foreign exchange rates, which has had a positive effect on sales of residential real estate. Further, certain segments of the population have changed their preference from city-centres to suburbs, due to a change in lifestyle and needs after COVID-19.

Another driver of the real estate market is the possibility to acquire Turkish citizenship by acquiring real estate worth at least USD250,000. Investors have taken advantage of this opportunity, relying on the current low value of the Turkish Lira. The number of homes sold to foreign persons increased to 26,000 at the end of Q3 2020 and to 37,500 at the end of Q3 2021.

The expected supply chain shifts from China to locations nearer to end-users due to the effect of COVID-19 may also benefit the Turkish commercial real estate market, due to location and transport opportunities in Turkey.

Alongside mid-scale developments, major infrastructure projects are a main driving force in the real estate sector. Examples of recently completed infrastructure projects, referred to as "mega projects" due to the large-scale investment involved, include the Gebze-#zmir toll road, the new Istanbul airport, and the Ba#ak#ehir city hospital. Projects that are about to commence or are under construction include the Çanakkale bridge, the Istanbul Finance Center, and Canal Istanbul.

The energy sector has also attracted the attention of the government and investors, with several pipelines (TANAP and TurkStream) and nuclear power plant projects being driven by the government. The renewable energy sector (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 in the past few years.

Capital market instruments have 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.

Real Estate Investment

Investment Structures

2. What entity types and acquisition structures do investors typically use for real estate investment in your jurisdiction?

Common Entity Types

The most common entity types used for real estate investment in Turkey are joint stock companies (JSCs), limited liability partnerships (LLPs), joint ventures (JVs), real estate investment funds (REIFs), and real estate investment trusts (REITs).

Ordinary partnerships are not common entities for real estate investment, while JVs are commonly used for blending real estate expertise.

While REIFs and REITs are real estate-oriented instruments, JSCs and LLPs are not solely used for real estate investments. However, these companies are also commonly used for this purpose.

JSCs are legal entities suited for large operations where the liability of the shareholders is limited to their capital contribution. On the other hand, members of the board of directors may be held liable for public debts (tax and social security premium liabilities). It is possible to contribute capital in kind to a JSC, such as real properties or rights in rem.

Similar rules generally apply to LLPs, except for any additional payment liabilities of the shareholders arising from the LLP's articles of association. It is also possible to convert a JSC and an LLP into each other.

Real Estate Investment Trusts (REITs)

REITs and REIFs are available and commonly used. 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.

At least 25% of a REIT's shares must be offered to the public. REIF shares can only be offered to institutional investors (for example, investors holding capital market instruments exceeding TRY1 million).

REITs and REIFs are regulated by the *Capital Markets Board (CMB)*. They must comply with general principles of corporate governance and risk management, which increases investor confidence. The public offering and establishment of fund procedures increases transaction costs.

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

Common Acquisition Methods

Asset purchases. In a real estate asset purchase, title to a property is transferred and the transfer is registered at the land registry. Asset purchases are relatively straightforward and offer several advantages compared to purchasing the shares of a company holding real estate:

- Generally, it is less cumbersome to conduct due diligence on the seller in an asset purchase, as the buyer is not acquiring target company liabilities.
- Several tax exemptions may apply (see *Question 18*).

However, a title deed registration fee of 4% of the purchase price must be paid, split equally between the buyer and the seller in practice. VAT is also payable on a sale of real property owned by companies or individual merchants.

Further, it is not possible to keep asset transactions confidential, as transfers of title are recorded at the land registry.

Share purchases of companies holding real estate. The main advantage of a share purchase is flexibility. The share transfer can be made through a share purchase agreement in addition to endorsement of the share certificates, if any, whereas a real estate asset transfer must be registered at the land registry.

In addition:

- No VAT is payable on share transfers.

- The parties do not pay a title deed registration fee or stamp duty on the share purchase agreement.
- Parties can apply flexible structures to the transfer (for example, on closing or under the share purchase agreement).

The main disadvantage of a share purchase is the need to conduct detailed due diligence on the target company, since the target company's liabilities transfer to the buyer, who also must pay the transaction fee (the purchase price and trade registry fees).

While share transfer and asset transfer are the two main methods commonly used to transfer real estate, ownership of a real property can also change upon foreclosure of a mortgage or forced sale by auction by enforcement offices.

Sources of Finance and Investment

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 for construction.

State incentives for real estate investment are granted based on the type, size, and location of the investment. The Foreign Direct Investments Law (FDIL) eased the requirements for foreign nationals to invest in Turkey. It encourages foreign direct investment through the principle of equality of all companies incorporated in Turkey, regardless of foreign shareholding. Foreign capital companies can benefit from incentives under the same conditions as local investors.

Foreign investment is also supported by the government through the *Investment Office*. It assists foreign investors by providing free services, such as market analysis, finding local companies for potential partnership, and assisting with legal procedures and legislation issues.

There is a special incentive regime, including tax incentives provided by REIFs and REITs. The government is pursuing an economic policy heavily focused on real estate, to create a favourable market for investment. It is possible to acquire Turkish citizenship by acquiring Turkish real estate worth at least USD250,000 (the government lowered this threshold from USD1 million to USD250,000 in 2018). This has attracted many foreign individuals (see *Question 1*). Foreign individuals can also benefit from this rule by executing a preliminary sale contract (a promise to sell agreement) before a notary public for real property worth at least USD250,000 and by buying real estate from projects under construction.

According to the Turkish Statistical Institute, 40,812 houses were sold to foreign nationals in 2020. 58,576 houses were sold to foreign nationals in 2021. This increase is believed to be due to the possibility to acquire citizenship through real estate investment.

Restrictions on Foreign Ownership and 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 lending, security and guarantees to buy or occupy real estate in your jurisdiction?

Foreign Ownership of Real Estate

A foreign individual can only acquire ownership or other property rights in Turkey if they are a citizen of one of the countries approved by the Council of Ministers. This list is not public, but the land registry can be consulted to confirm whether a person can acquire real property in Turkey. Under the Land Registry Law no. 2644, the president determines the countries whose citizens can acquire real estate in Turkey.

A foreign individual can only purchase a maximum of 30 hectares of real property in Turkey. The Council of Ministers can double this amount but the conditions for such an increase are not regulated under the relevant legislation. Land Registry Law 2644 sets out the restrictions on foreign persons acquiring real estate in Turkey.

In addition, the surface area of real property acquired by a foreign individual cannot exceed 10% of the surface area of any district (Article 35, Land Registry Law 2644).

If a foreign individual or company acquires greenfield land without any construction works or buildings, within two years of the acquisition the foreign individual/company must submit a project to develop the land for the approval of the relevant ministry. The relevant ministry will ensure that the project is completed within the required period.

The relevant land registry office examines whether all the above conditions are met before registering a foreign individual or company as the owner of the real estate.

The relevant land registry office also liaises with relevant military units (authorised by the Turkish Chief of Staff) to confirm whether the real property is in a military forbidden zone, military security zone, or strategic zone. Foreign persons cannot acquire real estate located in such zones.

A foreign company incorporated abroad cannot acquire real property in Turkey unless permitted under special laws such as the Petroleum Law, Tourism Law, or Industrial Zones Law.

These laws do not provide investors with enough flexibility for their investment. Foreign investors therefore often set-up a single-purpose foreign capital Turkish company to acquire property for their real estate transactions in Turkey. If the majority of the shares in the foreign capital Turkish company are owned by foreign companies or foreign individuals, the approval of the local governorship must be obtained for the foreign capital Turkish company to acquire real property in Turkey. In particular, it must apply to the local Governorship Provincial Planning and Co-ordination Directorate where the real estate is located, together with the information and documents listed under the Title Deed Act No. 2644.

After receiving the application, the local Governorship Provincial Planning and Co-ordination Directorate will request the Provincial Directorate of Trade and Industry to provide written opinions within seven days as to whether the applicant's scope of activities requires such real estate acquisitions. The local Governorship Provincial Planning and Co-ordination Directorate

then decides the application. If the assessment is positive, the results are notified to the relevant land registry office by the commission. If the decision is negative, the results are only notified to the applicant company.

Foreign Lending, Security and Guarantees

Creating 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 to acquire 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

Title Registration

5. How is title to real estate evidenced? What is the system for public registration/recordation of title? Is electronic access and electronic conveyancing available?

How Title is Evidenced

Title is evidenced by a title deed certificate (*tapu*) kept by the [land registry](#). Transfers of title must be registered at the land registry to have legal effect. All other interests in real property, including mortgages, usufruct rights, rights of first refusal, and rights of repurchase, must all be registered at the land registry to be valid.

The land registry provides a definitive record of real estate ownership.

If the land is not registered in the land registry records, title is evidenced based on documents kept by land registry offices showing the possession (*zilyetlik*) status of the land, together with supporting documents such as tax records, court minutes, and so on, which is not common in Turkey.

Public Registration/Recordation System

Title is registered at the land registry. Land records are kept in both the central database in Ankara and at the local land registry offices.

Electronic Access and Conveyancing

Electronic access to title information by the public is not available. However, owners can view their property through their own accounts on the government's electronic database, available on the [land registry website](#).

The *Electronic Land Registry System (Web Tapu)* is an online platform enabling applications for online sales, mortgages, transfers of title and similar title deed transactions, without going to a land registry office. Users can send information and documents required for transactions in a secure electronic environment, verify documents, and authorise third parties in these matters. An owner of the real property can upload the necessary documentation and information during an application.

After paying the relevant fees, the parties must appear before the relevant land registry office on the date and time set by the land registry for signature of the official deed prepared by the land registry office as a statutory form sale contract (see *Question 10*). The parties must also submit original copies of documentation uploaded to the Web Tapu website.

The Web Tapu system is integrated with the *E-Government system (E-Devlet)* and can be used by foreign persons. A valuation report preparation and approval process is carried out digitally, through the Real Estate Valuation Information System (TADEB#S) under the Web Tapu system. Valuation report requests for real estate transactions where foreign individuals are buyers can now be made through the Web Tapu system.

Currently, electronic signatures are not accepted by the authorities managing the title registers/records.

6. What are the main information and documents registered/recorded in the public registration/recordation system? Can confidential information or documents be protected from disclosure?

Main Information and Documents

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

- Information about the owner.
- Acquisition dates.
- Type of transfer (for example, sale and succession).
- Surface area of the property.
- Encumbrances.
- Declarations concerning the property (for example, mortgages, lease annotations, lawsuits, and expropriations).

Confidential Information

In principle, land registry records can be accessed by parties who can show an interest in examining them (for example, if they can provide evidence of ownership or rights over the relevant land).

Qualified professionals such as attorneys, city planners, and valuation experts can access the land registry records. However, they cannot review detailed confidential information (such as the owner's address or identity number) 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, through the TAKPAS system. This was introduced following the protocol signed between the land registry and the Union of Turkish Bar Associations.

7. Is there a state guarantee of title? Are authorities that manage public title registration/recordation systems liable for title registration errors? Is title insurance available and is it commonly used?

State Guarantee of Title and Compensation

There is 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, Civil Code). 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.

Title Insurance

State guarantee of title insurance is free and public. Therefore, title insurance is rarely used. Title insurance is offered by several insurance companies.

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

Freehold Title/Absolute Ownership

The main types of ownership are freehold and leasehold.

Freehold ownership gives the owner the right to use, benefit from, and dispose of the property. These rights are conceptually separable. More limited property rights can be created by carving them out from simple freehold ownership.

Freehold ownership, together with limited real rights, is regulated under the Civil Code no. 4721.

Both co-ownership and joint ownership are available under the Civil Code. Whereas none of the co-owners can dispose of their share without the consent of the others in co-ownership, the situation is the opposite in joint ownership.

Leasehold Title

The main types of ownership are freehold and leasehold. The Code of Obligations no. 6098 applies to leasehold.

Condominium Ownership/Equivalent

Condominium ownership is also available under the Condominium Ownership Law no. 634, for different independent units, each of them with separate pages in the title deed records.

Other Rights

A right to build on a piece of property can be granted to a third party (*üst hakk#*). The holder of this right becomes the owner for a certain period of any structures built on the land within the scope of the right. If a right to build is intended to be independent and indefinite (granted for more than 30 years) (*ba##ms#z ve sürekli*), the holder of the right can register it at the land registry as a separate property interest. This right is then essentially treated no differently to a right in an independent piece of real estate. The Civil Code applies here.

It is also possible to separate the right to use and to benefit from a piece of property from the right of disposal. A complete right of use and benefit can be granted to a third party, known as a usufruct right (*intifa hakk#*). In a strict sense, usufruct in Turkish law is a personal right rather than a property right, because it 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. The Civil Code applies here.

Sale of Real Estate

Preliminary Agreements

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

There are two types of preliminary agreements:

- Letters of intent/memorandums of understanding. They are not legally binding.
- Promise to sell agreements (see [Question 10](#)). Parties can execute a promise to sell agreement before a notary public, which makes it a fully binding agreement.

Sale Contract

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

Commercial Real Estate Sale Contracts

Real estate sale contracts are executed as a standard form contract (official deed) at the land registry (see [Question 16](#)). They only include basic provisions about the identity of the buyer and the seller, the purchase price, and property information. It is not possible to make a tailor-made sale contract.

The parties can execute a more detailed and binding promise to sell agreement before a notary public, in-line with the parties' agreed format and content. A statutory form promise to sell agreement is commonly used for a pre-sale of real estate to determine the conditions of sale. To complete the transfer of ownership, a transfer before the relevant land registry office must also be made (see [Question 16](#)).

If representations and warranties are given (see [Question 12](#)) and the property is not sold as-is, it is advisable to execute a promise to sell agreement before a notary public to provide for the representations, warranties, and conditions precedent.

In addition to provisions arising from specific features of the relevant land and projects, promise to sell agreements generally include the following provisions:

- Purchase price.
- Information about the property.
- Conditions precedent, if any (for example, approval of the zoning plan, completion of zoning implementation, and 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.

Share Purchase Agreements: Real Estate Provisions

The above terms and conditions are also included in real estate-related share purchase agreements, as well as:

- Representations and warranties about the target company.
- Payment adjustment provisions.
- Discharge of liabilities at the closing date.

Due Diligence

11. What real estate due diligence is typically carried out before an acquisition?

Buyers generally engage lawyers to carry out legal due diligence. Lawyers inspect the land registry records and usage restrictions 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.

Technical consultants are usually appointed for environmental and technical due diligence matters, and financial advisers are appointed in 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, property status, encroachments, zoning matters, building-related licences/permits, and property taxes.

A due diligence study is carried out before the transaction takes place, since it affects the commercial terms between the parties and gives bargaining power to the parties.

Sellers' Warranties

12. What real estate warranties are typically given by a seller to a buyer in the sale of commercial real estate? What are the main limitations on warranties, for example, qualified by knowledge and disclosure?

The following representations and warranties are commonly given by the owner in a sale of property through an asset transfer and a share transfer of the entity holding the real estate:

- The owner is the undisputed owner of the property, and third parties do not have any rights over the property, there are no encumbrances over the property, and there is no pending lawsuit affecting the property.
- 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).

Other representations and warranties can be obtained according to the specific features of the property (for example, historical areas). If representations and warranties are given and the property is not sold as-is, it is advisable to execute a promise to sell agreement (see [Question 10](#)) before a notary public to provide for the representations, warranties, and conditions precedent.

Environmental representations and warranties are occasionally demanded but rarely granted.

The representations and warranties given by the owner are typically qualified by disclosure.

Asset sales typically involve very limited representations and warranties, given that comprehensive and definitive information about encumbrances on land, including easements, security interests, and pre-emptive rights, are disclosed in public records.

In a share sale of the entity holding the real estate, extensive representations and warranties are generally required. Real estate-related representations and warranties are included in the share purchase agreement, in addition to general representations and warranties.

Liability

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

The seller has statutory liability for defects and deficiencies in the property. The seller is also liable for any restrictions on the property, such as third-party rights or limitations (Code of Obligations).

There is a statutory limitation period for defects liability relating to immovable property sales (one year, five years, or ten years, depending on the type of asset and the provisions applicable) (Code of Obligations).

The parties can also agree a monetary limit on the seller's liability, unless there is a wilful act or gross negligence by the seller.

Environmental Issues

14. Briefly outline the environmental legislation and potential liability in a purchase of real estate. Is it common to carry out environmental due diligence and obtain environmental insurance? How is environmental liability typically dealt with in the sale contract?

Environmental Legislation and Liability

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 liable for contamination that occurred before taking ownership.

The primary principle is that the polluter pays (Article 28, Environmental Law).

However, there is a statutory presumption that the current occupier has caused any contamination at the property (Environmental Law and the Code of Obligations). The occupier may need to rebut that presumption by proving that an earlier owner caused the contamination. Due diligence findings may prove useful in this situation.

Environmental Due Diligence and Insurance

It is to the buyer's advantage to carry out environmental surveys and searches and obtain environmental insurance. However, this is not very common and environmental surveys are specifically conducted in areas where contamination is already suspected.

Environmental Issues in the Sale Contract

The parties can regulate environmental liability in their sale contract by stipulating that the buyer will have recourse to the seller for environmental liability.

15. What types of liability can a buyer inherit relating to the real estate? Can a seller retain liability relating to the real estate after the sale?

Buyer Inheriting Liability

A buyer as the new owner can incur criminal, civil, and administrative liability for matters relating to the real estate, even if they occurred before they purchased it.

A seller as the previous owner is essentially liable for defects and deficiencies in construction, but the new owner can also incur liability for omitting to inspect the construction. There is no clear written rule in this respect.

In relation to criminal and administrative liability, the general rule is that a person carrying out illegal construction works is liable for administrative fines. However, the buyer/new owner must prove that the illegal act was carried out before the transfer of title. Therefore, proper due diligence is necessary before the transfer of the property. In addition, the new owner is also affected if the relevant authority decides to seal the property and issue a demolition order.

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

Seller Retaining Liability

See above, *Buyer Inheriting Liability*.

Exchange and Completion/Closing

16. When does the sale become legally binding? What are the main documents and formalities for exchange and completion/closing of the sale? When does title transfer? Is notarisation required?

When Legally Binding

The sale becomes legally binding when the parties execute the sale contract at the land registry (see [Question 10](#)), the title to the real estate is transferred, and the transfer is registered in the buyer's name at the land registry (see below, [Completion/Closing Documents](#)).

Parties can execute a promise to sell agreement before a notary public, which makes it a fully binding agreement (see [Question 10](#)).

Parties or their representatives authorised by a statutory form power of attorney signed before a notary public should be present in the relevant land registry office during the execution of the sale contract (the official deed).

While a deposit payment is not a legal requirement for transfer of title, parties generally include an advance payment under the promise to sell agreement.

Completion/Closing Documents

To complete the sale, the parties must transfer the title to the real estate and register the title transfer in the buyer's name at the relevant land registry office.

After the parties execute the sale contract (official deed) at the relevant land registry office, the land registry officer registers the transfer in the land registry records for the property and issues a new title deed certificate, bearing the seal of the land registry office.

The main documents and actions required to complete the sale are as follows:

- The parties must execute the sale contract at the relevant land registry office.
- Documents relating to the parties (for example, proof of identity and signatory circular) must be submitted to the land registry.
- Documents must be obtained and produced from the local municipality indicating the registered tax value of the property and that there are no outstanding real property taxes relating to the property.
- If the buyer is a foreign individual, the land registry office will check that the conditions for a foreign individual to own real estate in Turkey are met (see [Question 4](#)).
- If the buyer is a foreign capital Turkish company and the majority of its shares are owned by foreign companies or real persons, approval of the relevant governorship must be obtained for the acquisition and produced to the land registry office on completion (see [Question 4](#)).

If representations and warranties are given and the property is not sold as-is, it is advisable to execute a promise to sell agreement (see [Question 10](#)) before a notary public to provide for the representations, warranties, and conditions precedent. On fulfilment of the conditions precedent under the promise to sell agreement, the sale can be completed at the land registry.

Completing a sale of real estate through a share sale requires:

- An executed share purchase agreement.
- Registration of the transfer in the company's share ledger.
- Endorsement of share certificates, if any.
- Authorisation documents from the relevant trade registry office (if any of the parties is a foreign company).

Approval of the general meeting is required for limited liability companies. Specific notifications to the trade registry and notarisation of the relevant document (notifications of a sole shareholding, group companies, and so on) are also required.

When Title Transfers

Title to real estate transfers when the transfer is registered with the land registry records. This is possible on execution of an official form sale contract (official deed) before the land registry office.

Notarisation

A promise to sell agreement (see [Question 10](#)) is executed before a notary public and a notary fee must be paid. This is not a fixed fee and varies according to factors such as the number of pages in the contract and the purchase price.

Real Estate Tax

Stamp Duty/Transfer Tax

17. Is stamp duty/transfer tax (or equivalent) payable on a 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?

Stamp Duty/Transfer Tax

A title deed registration fee must be paid on the transfer of property (see [Question 16](#)).

Who Pays and Typical Tax Rates

The title deed registration fee is 4% of the declared purchase price and is generally split equally between the buyer and the seller (that is, the buyer and the seller pay 2% each). In specific cases, the parties agree a full payment of the title deed registration fee by the seller or the buyer.

Exemptions

The title deed registration fee is always payable, except for an exemption introduced for transfers within the scope of urban transformation under the Law on Restructuring of Areas under Risk of Natural Disasters no. 6306.

Transfer of Shares

Stamp duty and title deed registration fees do not apply to a transfer of shares in a company holding real estate.

Tax on Seller's Profits/Gain

18. Is tax imposed on a seller's profit or gain on a sale of real estate? What are the rates and are there any exemptions? Does it apply to a transfer of shares in a company holding real estate and at what rate?

Tax on Seller's Profits/Gain

Capital gains tax (CGT) is in principle payable on a seller's profit or gain from a sale of real estate.

Typical Tax Rates

For individuals, the CGT rate is between 15% and 40%. For corporations, the CGT rate is 20%.

Exemptions

A corporation is exempt from 75% of the CGT payable on a real estate asset sale if the corporation has owned the property for at least two years and the sale of real property is not its area of business.

There may also be favourable tax treatment under double taxation agreements.

A corporation that does not engage professionally in real estate business can shield from tax 50% of the income from the sale, if the proceeds are retained in the company's reserves.

If an individual owner has owned a property for at least five years, the owner is exempt from capital gains tax (CGT) on a sale of the property if the owner is not professionally engaged in real estate business.

Transfer of Shares

CGT also applies to a seller's profit or gain on a transfer of shares in a company holding real estate.

A corporate seller is exempt from 100% of CGT payable on the share transfer if it has held the shares for at least two years.

19. Are any methods commonly used to mitigate transfer tax liability on acquisitions of real estate, or tax on gains from the sale of real property?

Methods such as divisions, mergers, and share transfers are used to benefit from mutual tax agreements between governments and exemptions.

Share deals are used to mitigate real estate tax liability, especially if there are inter-governmental agreements providing tax exemptions.

REIFs (see [Question 2](#)) can be used to structure a tax-efficient real estate transaction.

Tax authorities generally welcome genuine structures that enable the application of tax exemptions.

Value Added Tax (VAT) or Equivalent

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

VAT/Equivalent

VAT is payable on a sale of real estate owned by individual merchants and companies.

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

VAT does not apply to a transfer of shares in a company holding real estate.

Who Pays and Typical Tax Rate

In practice, VAT is generally paid by the buyer. Despite VAT Law no. 3065 stating that the seller is responsible for VAT payment, parties can regulate their commercial terms based on freedom of contract. In general, sellers collect the VAT from the buyer and pay it to the tax authorities.

The general VAT rate of 18% applies to a sale of commercial property.

Reduced VAT (at a rate of 1%) applies to a sale of residential property with a net area of less than 150 square metres, subject to conditions (for example, the construction permit was obtained before 1 January 2013, or the construction is within the scope of the 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 progressive VAT rate applies (1%, 8%, and 18%, according to the registered value of the land).

Exemptions

Several exemptions are available for certain types of financial institutions, such as asset management companies, asset leasing companies, and banks.

Certain exemptions are available for historical properties.

A sale of land held by a corporation for at least two years is exempt from VAT. This does not apply to limited liability companies and corporations that conduct real estate sales as a business.

Municipal/Local Taxes

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

There is no periodic tax applicable to the occupation of business premises. However, a fee determined by the municipalities is paid to obtain and renew operation permits. There is no specific exemption from operation permit fees.

An annual property tax must be paid to the local municipality by the owner, which is determined by the municipality according to the value of the relevant 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 provides criteria for tracking, reporting, and verifying greenhouse gas emissions.

The Regulation on Energy Performance in Buildings contains building construction rules to meet certain minimum energy efficiency criteria. If the architectural, mechanical, and electrical standards of a building do not comply with the regulation in terms of energy efficiency, a construction permit will not be granted by the relevant authority. In addition, if construction is not carried out in accordance with the official standards issued under the regulation, a building occupancy permit will not be granted until the deficiencies are rectified.

In October 2021, the Turkish parliament ratified the *Paris Agreement on Climate Change*, which was signed by Turkey in April 2016. Accordingly, new legislation on climate change is likely to enter into force in Turkey in the near future.

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 contracts or leases.

In certain deals, sellers or contractors are required to obtain a *LEED* gold or premium certificate. Some developers market flats and 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 commercial real estate lending. How are the most common forms of security interest relating to real estate created and perfected? Is there a mortgage tax/registration fee?

Typical Security Package

In most cases, mortgages are created over land relating to the project and other land owned by the developer (where applicable).

The following security interests are also generally taken by lending banks:

- Personal guarantees (such as sureties and parent guarantees).
- Assignment of receivables schemes.
- Share pledges.

Security is typically also taken over the borrower's rental income, bank accounts, insurance policies, and key agreements.

The concept of a floating charge does not exist in Turkey.

Common Forms of Security: Creation and Perfection

Mortgages must be created before the land registry. To complete the procedure to create a mortgage, the parties must execute a mortgage deed before the land registry office and register it before the land registry records.

Personal guarantees (such as sureties and parent guarantees), assignment of receivables schemes, and share pledges are created in writing. There are no additional formal requirements.

Mortgage Tax/Registration Fees

Stamp tax (0.94% of the amount subject to mortgage) and a mortgage fee (0.45% of the amount subject to mortgage) are paid to create a mortgage.

Foreign financial institutions are exempt from taxes and fees arising out of security granted over real estate.

There is now an exemption for half of the mortgage fee (0.227%) for mortgages established between merchants.

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

As lenders, banks execute detailed credit agreements to secure their position, by inserting clauses such as:

- Conditions precedent.
- Detailed default clauses dealing with the borrower's insolvency or financial difficulty.

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?

Lender Liability

The primary principle is that the "polluter pays" (Article 28, Environmental Law) (see [Question 15](#)). Therefore, there is no legal provision holding lenders liable under environmental regulations.

Lender Protection

See above, [Lender Liability](#).

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

Lenders' Remedies

As a rule, the borrower is deemed to have been in default on the expiry of the cure period granted by the lender by a default notice for the performance of a due and payable debt.

The main remedy for lenders in relation to secured real estate is a sale of the property by triggering a formal foreclosure procedure.

Under Turkish law, in the event of a borrower's default, a lender can only force the sale of the property with the involvement of an execution office. The Turkish enforcement system consists of enforcement offices and civil and criminal enforcement courts. Enforcement offices are government offices with powers to make decisions on parties' formal requests to some extent, based on the Enforcement and Bankruptcy Law no. 2004.

It is not possible to include an obligation in credit agreements to transfer title to the property in the event of the borrower's default.

Effect of the Borrower's Insolvency

The borrower's insolvency imposes a stay on enforcement proceedings. However, the enforcement office can issue a certificate of insolvency (*aciz vesikas#*) granting the lender the right to claim its receivables for another 20 years.

Lenders of 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 (Enforcement and Bankruptcy Law no. 2004).

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

Lenders conduct detailed due diligence on construction and development projects. This includes a review of:

- Zoning, land registry, and cadastral records of the property.
- Key contracts (for example, the construction agreement), licences, and compliance with legislation and regulations.

In general, if construction or operations cease, the borrower will probably default on credit repayment. Therefore, confirming whether there is a risk of cessation of the project is important.

Due diligence is also crucial when a mortgage is created over project land. The security provided by a mortgage depends on the value of the land and the borrower's ownership rights to the land.

Lenders also obtain security such as assignments of receivables and share pledges 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.

Other real estate finance techniques commonly used in Turkey include issuing real estate certificates and lease certificates, in accordance with capital markets regulations.

Other techniques such as public offerings of shares in REITs or issuing 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 commercial lease provisions regulated or freely negotiable? Which legislation applies?

Freedom of contract is a recognised principle under Turkish law. However, leases fall under a specific area of law where certain mandatory provisions apply, mostly favouring tenants. Leases are regulated under the Code of Obligations.

To protect Turkish currency, local companies and local individuals must enter leases in Turkish lira (Decree no. 32 on the Protection of the Value of Turkish Currency). This does not apply to leases where the tenant is a foreign individual or a Turkish foreign capital company.

Certain limitations on rent increases apply (see [Question 32](#)). These and similar provisions (such as the prohibition on including penalty and acceleration clauses) apply to leases where the tenant is a merchant or a company.

31. Are there formal legal requirements to create and execute a lease? How are leases executed by a company, a partnership, and individuals?

Formalities for Leases

There are no formal requirements to execute a lease under Turkish law. However, execution of a lease in writing is advised for evidentiary reasons.

Execution Requirements

The signatories of the company, authorised by a signature circular issued based on a relevant board resolution, execute leases on behalf of a company.

Ordinary partnerships do not have any representation mechanism. Therefore, the partners should give a power of attorney to appoint a signatory.

An individual person can directly sign a lease without any further procedure.

Rent Payments

32. At what intervals is rent usually paid in a business lease? How are rent levels usually determined and reviewed?

Rent Payment Intervals

As per market practice, rent is usually paid in advance and paid monthly. Parties can agree otherwise and pay lump sum rent amounts for six months or one year.

Rent Review

If the rent is agreed in Turkish Lira, it can be increased annually according to the producer price index (Article 344, Code of Obligations).

Rent cannot be increased within the first five years if the rent is agreed in a foreign currency.

Although rent increases are limited by law, the landlord can apply to a court to re-determine the rent and adjust it according to the market value at the end of five-year periods.

33. Is stamp duty and VAT (or equivalent) payable on rent?

Stamp duty is payable on rent in commercial property leases. Stamp duty is calculated as 0.189% over the total rental fee amount for the whole lease term.

Rent in residential property leases is exempt from stamp duty.

If leased property is part of a commercial enterprise or owned by a limited liability company or corporation, VAT applies to the rent at a rate of 18%.

If the landlord of a commercial property is an individual, a withholding tax applies to the rent at the rate of 20%.

34. Is a rent security deposit or other security usually required by the landlord?

Payment of a security deposit by the tenant is not compulsory but security deposits (cash or bank letter of guarantee) are generally collected by landlords as market practice.

For leases where the tenant is a merchant or a company, the tenant's security deposit cannot exceed three months' rent and must be kept in a bank account jointly held by the landlord and the tenant.

Parties can agree on the form of the security deposit. In practice, especially for commercial leases, landlords prefer a bank letter of guarantee for the security deposit.

Length of Term and Security of Occupation

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

Length of 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 commonly agreed. No legal requirement applies as to the term of a lease. Longer terms are also possible for residential leases.

Security of Occupation

Under Turkish law, on expiry of a lease of residential premises and of roofed workplaces, there is a mandatory rule stipulating an automatic renewal of the lease term for an additional one-year term, until the end of the ten-year period following the initial expiry of the lease (Code of Obligations). Even if the parties exclude this renewal, it will apply as a mandatory rule in favour of the tenant. During these ten years, the landlord can only evict the tenant on limited grounds. At the end of the ten years, the landlord can terminate the lease with no additional cause.

Disposal

36. What restrictions typically apply to the disposal of the lease by the tenant?

Assignment and Subletting of the Lease

Subletting and assignment of the lease are prohibited without the landlord's written consent. In a business lease, the landlord cannot refuse to give consent to an assignment of the lease without a just cause for the refusal (Code of Obligations).

Group Sharing

There is no specific provision on tenants sharing their premises with companies in the same group. This is not very common in the Turkish letting market but it is possible if determined in the lease.

Legal Reorganisation or Transfer/Sale of the Tenant

There is no specific provision on the transfer of leases to group companies or change of control of the tenant company. Assignments of leases to group companies are subject to the general rules on lease assignment (see above, [Assignment and Subletting of the Lease](#)).

A change of control of the tenant company is not restricted under Turkish law and does not trigger a default. In the event of a merger or division, leases transfer to the new entity by operation of law and a guarantee and surety remain valid. However, in commercial leases, change of control of the tenant is often deemed a breach of contract requiring the landlord's approval.

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

Landlord's Retained Liability

In principle, the landlord ceases to be liable on assignment of the lease.

Tenant's Retained Liability

In principle, the tenant ceases to be liable on assignment of the lease. However, in business leases, the tenant as the assignor is severally liable with the assignee until the expiry of the lease, up to a maximum period of two years (Code of Obligations).

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

Repair and Insurance

38. 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 improvements carried out to the premises during the lease?

Repair

Unless agreed otherwise in the lease, the tenant is responsible for ordinary repair and maintenance of the leased premises. The landlord is responsible for improvements and major repair and maintenance.

If the premises only include an internal part or parts of the building, the landlord is responsible for repair of the main structure of the building.

The landlord's repair costs are passed onto the tenant if such costs arise from the tenant's fault or the lease provides for this arrangement.

Insurance

Under the Code of Obligations, as a rule, the landlord is responsible for taking out insurance for the leased premises. Insuring the common areas and structural parts is already the landlord's responsibility, except for a lease of a stand-alone building.

The landlord and tenant have separate insurance policies.

The types of insurance typically required to be obtained include all-risk insurance, third party liability insurance, mandatory earthquake insurance, and so on.

The landlord's insurance costs are not passed onto the tenant where applicable, unless otherwise agreed between the parties.

The landlord must provide statutory building insurance in residential properties.

Ownership of Lease Improvements

Tenants can alter leased premises if this is permitted under their lease. Structural improvements may require a licence from the local municipality, which is only issued to landowners. If a landlord has consented to a tenant's application to carry out works to the leased premises, the landlord cannot demand the return of the leased premises to their previous condition.

Tenants must leave improvements attached to the leased premises at the end of the lease term. They cannot demand compensation for any increase in value of the leased premises due to the tenant's improvements. These rules can be modified by agreement between the landlord and the tenant in the lease.

Landlord's Remedies and Tenant's Insolvency

39. 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? What is the effect of the tenant's insolvency?

Landlord's Remedies and Grounds for Termination

Under the Code of Obligations, a landlord can terminate a lease in the following circumstances:

- The landlord has served a written notice on the tenant twice in one lease term for failure to pay rent.
- The tenant undertakes to vacate the leased premises on a certain date but fails to do so.
- The landlord has a specific need for the leased premises (for example, the landlord or their family member must use the leased premises).
- Material repairs must be made to the leased premises, and the tenant's continued occupation of the leased premises in these circumstances is not possible.

- The tenant uses the leased premises in breach of terms and conditions of the lease. If the tenant's breach is not material, the landlord must give a cure period of at least 30 days. If the breach is material and unlikely to be cured within the cure period, the lease can be terminated with immediate effect.
- The tenant is declared insolvent and fails to provide security for rent.

If the tenant does not leave the leased premises despite a notice of termination served by the landlord, the landlord must apply to court to evict the tenant.

In the event of the tenant's default due to non-payment of rent, the landlord can, under the Code of Obligations, either:

- Give 30 days' written notice to the tenant to pay the rent. If the tenant does not pay the rent amount within the 30 days, the landlord can apply to a court to request eviction proceedings. If the tenant pays the rent amount within the 30 days, but the landlord has served two valid written notices on the tenant within one year for failure to pay rent, the court will grant the landlord the right to evict the tenant.
- Directly commence enforcement proceedings for payment of the rent, through an accelerated procedure before the enforcement court.

Effect of the Tenant's Insolvency

If the tenant is declared insolvent and fails to provide security for rent, the landlord can terminate the lease.

The tenant's insolvency suspends enforcement proceedings against the tenant for unpaid rent and other amounts. However, the landlord can obtain a certificate of insolvency to collect its receivables for a 20-year period, under the Enforcement and Bankruptcy Law no. 2004.

40. 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?

Tenant Withholding Rent

If there is a defect in the leased premises, a tenant can ask the landlord to rectify the defect or rectify the defect itself and claim a deduction of the amount from the rent.

Tenant Terminating the Lease

A tenant can terminate a lease if the premises are not suitable for use in a material way (Code of Obligations).

Planning and Development Controls

41. In what circumstances can local or state authorities purchase business premises compulsorily (expropriation)?
Is the purchase price or compensation based on market value?

Compulsory Purchase/Expropriation

Turkish law permits expropriation of property on the grounds of public interest. The transfer can take place voluntarily or the government can apply to court to transfer private property to it in return for compensation. The purchase price must match the market price (Expropriation Law no. 2942).

The right to property is a constitutional right under Turkish law and is guaranteed under the European Convention on Human Rights. If this right is infringed, it is possible to appeal to the Constitutional Court and the European Court of Human Rights under Turkish law.

Compensation

The purchase price must match the market price (Expropriation Law).

42. What authorities regulate planning control and which legislation applies?

In general, the municipalities are responsible for planning decisions. In certain circumstances, certain ministries and the Housing Administration (TOK#) have planning and zoning powers, for example, the Ministry of Development and Urban Planning and the Ministry of Culture and Tourism.

The Zoning Law no. 3194 and the Regulation on Implementation of Planned Areas apply.

Specific regulations apply to environmental, historical, and cultural assets and areas. In these cases, zoning plans and permits are subject to additional approval, for example from preservation boards for cultural assets or the preservation commission for natural resources.

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

Construction and occupation 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 additional requirements in specific regulations (for example, environmental impact assessments and discharge permits).

44. 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 submitted, depending on the municipality's workload, construction permits are issued within one to three months.

There is no heavy consultation procedure for construction permits, although approvals from relevant authorities should be obtained if the premises are of a specific nature (for example, from preservation boards for cultural assets).

Occupation permits are 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 construction and occupation permits. Lawsuits can be filed before administrative courts by concerned parties.

Recent Developments and Reform

45. Have there been any key recent developments in the real estate sector? Are there proposals to reform real estate law and are they likely to come into force and, if so, when?

Regulations on transferring zoning rights and establishing organised markets to transfer zoning rights are planned. A revision of the Zoning Regulation is also planned, to ensure more legal guarantees to protect vested rights under the zoning legislation.

In addition, the government is considering introducing legislation on real estate taxes, initiatives, and domestic market support.

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