Turkey: Real Estate

This country-specific Q&A provides an overview to real estate laws and regulations that may occur in Turkey.

For a full list of jurisdictional Q&As visit here
1. **Overview**

The real estate sector is one of the leading sectors in Turkey. Not only the houses but also the malls, offices, hotels and industrial constructions are playing a significant role within the growth of the real estate sector. Strategically situated at the crossroads of Europe, the Middle East, and Central Asia, and home to almost 80 million people, Turkey offers great opportunities for real estate developers and investors by combining a large construction sector with growing commercial and industrial output. Since the government was aware of this potential, it encouraged foreign and local investors to invest in real estate and tried to make the life easier for them.

Turkey is in an economic recession for over a year. The real estate sector was one of the most effected sectors from such economic depression. The government has passed a law allowing foreigners to obtain Turkish citizenship by purchase of real property worth US$ 250,000 which turned out to be a supporting tool for the real estate market. The data and financials of the economy seems to be recovering for the last few months. The economic crisis comes with opportunities. It would not be wrong to say that the Turkish real estate market offers very profitable and relatively cheap opportunities for foreigners due to the increased foreign currency rates against Turkish Lira. Government also supports low income housing and it is still expected the real estate sector in Turkey to grow in the next years and increasingly keep being an attraction centre for foreigners all around the world.

2. **How is ownership of real estate proved?**

The title to real estate is evidenced by registration in the land register. In Turkey, each real estate is registered before the land registry where the real estate is located. The land registry allocates a separate page for each real estate which includes information regarding the surface areas, block, section numbers of the parcel, legal owners, any encumbrances, annotations, price and undertakings etc. The land register is managed by the General Directorate of Land Registry and Cadastre set up under the Ministry of Environment and Urbanization.

Regulations related to the real estate fully respects the land registry records as evidence of property ownership and the rights of bona fide third parties are protected under the Civil Code in case they acquire the ownership (or any other rights in rem) by relying on the records in the land registry. The government will be liable for losses of these third parties due to incorrect registrations in the land registry.

3. **Are there any restrictions on who can own real estate?**

The ownership right is regulated as a fundamental right under the Constitution of the Republic of Turkey. However, it has been also stated that the ownership right may be restricted by law for the public interest and the usage right of the property shall not be contrary to public interest.
Natural persons with foreign nationality, foreign legal entities and Turkish companies with foreign capital are defined as foreign persons. In this respect there are some restrictions for foreign persons who desire to buy real estate in Turkey.

- Natural persons with foreign nationality can purchase real estate property and acquire limited rights in rem subject to legal restrictions, bilateral international relationships and circumstances requiring action deemed necessary in the public interest. Foreign natural persons may own up to 30 hectares of property in total and may acquire a limited in rem right. By obtaining the permission of Council of Ministers, this amount may be raised to 60 hectares in maximum. Foreign natural persons can acquire property or a limited in rem right in a district/town up to 10% of the total area of the district/town. Also purchasing a property in military forbidden and security zones is not possible.
- Foreign legal entities established in a foreign country under their local laws can only own real estate property and limited rights in rem within the scope of special provisions of Turkish law, including the Petroleum Law, Tourism Incentive Law and Industrial Area Law. Legal entities other than foreign trading companies (foundations, associations, etc.) cannot acquire real estate and can not establish restricted right in rem.
- Turkish companies with foreign capital, in which persons with foreign nationality or foreign companies own at least 50% of the shares or have the right to appoint/dismiss persons with management rights, may acquire and use real estate property or limited rights in rem to carry out the activities stated in the companies’ articles of association, by getting the approval of the city’s Governorship where the real estate property is located. The same property rights apply where companies with foreign capital become direct/indirect shareholders of a company incorporated in Turkey, and own 50% or more of the company’s shares.

Additionally, if the foreign person (company or real person) acquires a land, a project shall be submitted to be developed on the land within two years to the Ministry of Environment and Urbanization. Otherwise the Ministry has to right to liquidate the real estate.

4. What types of proprietary interests in real estate can be created?

The main and common way to hold a real estate is ownership. On the other hand there are some other rights in rem which serve the right owner to hold the real estate. These easement rights are usufruct, right of habitation, right of construction, right of way, right of natural resources, right of construction. These rights can be established by registration to the land registry records. Some of the most common rights can be listed as follows:

Usufruct (usage right) is the closest right to ownership in terms of the rights granted to its holder. A holder of usufruct right can possess and use the land but not dispose like the owner. On the other hand the usage of this right can be transferred to third parties.

Right of habitation allows the holder to use the real estate only for residential purposes. In other words, in case the real estate is an office or a land, the right of habitation can not be
established. It is a highly personal right that cannot be neither leased nor transferred.

Right of construction allows the holder to construct a building on and/or under the real estate and to use the building during the term of the right.

Right of way can arise under the law or by means of a mutual agreement between the relevant parties. This right grants its owner the right to use the land of a neighbour for passing purposes.
Right of natural resources grants its holder the right to use natural resources, like water, which are situated underneath another person’s real estate.

Other than that, the right of encumbrance and liens are also accepted as rights in rem however they don’t grant a direct possession of the real estate its owner.

Additionally, rights arising from preliminary sale agreement or lease agreement, pre-emption rights, right of purchase, right of re-purchase are purely contractual rights. However such rights may be annotated to the relevant land registry and thereby be asserted against third parties.

5. **Is ownership of real estate and the buildings on it separate?**

Unless otherwise provided, the ownership of real estate includes the usable land above and below. Within the scope of this without prejudice to the legal limitations, property, buildings, plants and resources are within the scope of the real estate. In accordance with the principle of superficies solo cedit, anyone who owns a real estate is also the owner of building which is not movable or non-permanent. On the other hand, there are some exceptions to this rule such as construction right or natural source rights which are explained in details in Q4.

6. **What are common ownership structures for ownership of commercial real estate?**

There are no statistical studies indicating the percentage related to the type of the ownership but both there are some tax advantages for the companies.
In case the company (except the companies having real estate trade as its main activity) owns the real estate, it is exempt from VAT and %75 of the corporate tax by transferring it on the condition that the real estate properties are held for over two years.

7. **What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?**

It is not mandatory however purchasers usually prefer to conduct due diligence of legal, financial, environmental and technical matters concerning the transaction, especially regarding real estate property acquired for investment in industrial and commercial activities, and high-value property. Due diligence typically involves analysing:
Public registries to verify title and charges on the real estate.
- Leases over the real estate (including the lease term and its enforceability, grounds for early termination, rental payments, rent reviews and other obligations).
- Zoning plans of the land at the relevant municipality.
- Any licences over the real estate at the relevant municipality, such as construction licences.
- Town planning rules applicable to the real estate, status of licence granted to operate the property, and compliance of licences with town planning rules.
- Tax obligations of the property.
- Environmental aspects of the real estate.

The outcome of the due diligence review facilitates whether to realize the acquisition, and determining the seller’s representations and warranties, should the transaction proceed.

8. What legal issues (if any) cannot be covered by usual legal due diligence?

Since registration of the title deed has a protective effect regarding the acquisition of ownership and entitlement to limited rights in rem on real estate, the risk is low. On the other hand, contractual rights such as leasing or pre-emption right etc. can not be asserted to the third parties unless they are annotated before the acquisition to the land registry.

Please note if there is an expropriation decision or a pending case related to the real estate, these are usually notified to the land registry. However, for a limited time - until the notification is received by land registry- they cannot be seen on the records, and this can be deemed as a risk not covered in due diligence reports.

Additionally, we usually recommend checking the real estate physically in order to avoid any intruder occupant risks.

9. What is the usual process for transfer of commercial real estate?

In Turkish law, there is no difference between the transfer of commercial real estate and residential real estate.

In principle the transfer of the real estate may only be performed at the Land Registry Office where the real estate is located and before the authorized government officers. However, with the development of technology, the sale agreements now can be signed in a different Land Registry Office and the relevant documents are sent online to the Land Registry Office where the real estate is located. A sale agreement signed simply between the Parties or a sale agreement signed in front of the Notary Public would not be valid. On the other hand a preliminary contract for sale of a real estate should be concluded at the Notary. This kind of agreement grants the parties some rights such as demanding the sale of the real estate and the payment but would not transfer the ownership directly. In case the preliminary sale contract is annotated in the land register, the real estate cannot be subject to sale to the
third party, pledged or mortgaged for the following five years. The buyer can force, including filing a lawsuit, the owner of the real estate to transfer the title to him, if the conditions in the contract are met. A pre-sale contract, which is conducted in simple form, will not prevent the owner from transferring the real estate to a third party. The buyer can claim damages (and a penalty, if included in the agreement) but will have no right to force a third party to transfer the title to him/her.

Additionally, according to the Appeal Court Decisions, in case at least 90% of the building’s construction is completed, the buyer can demand the transfer of the real estate even if the pre-sale agreement is only signed simply among the parties.

There are only two transaction steps in the Turkish Law; Pre-agreement and Closing.

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<td>- Due diligence</td>
<td>Should be signed before the Notary to be valid.</td>
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<td>Closing</td>
<td>- Applying to the Land Registry</td>
<td>- Payment of purchase price</td>
<td>The necessary documents to be submitted should be prepared carefully.</td>
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<td>- Payment of relevant fees</td>
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10. **Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?**

The answer depends on the characteristic of the company and scope of the investment to be made. In case it is an SPV set up for holding the real estate only or a new company having no trading activities yet but owning a real estate, it is more common to transfer the shares of the company. On the other hand, if the company owning the real estate has a history and has many operating activities, it would be risky to obtain the shares instead of directly transferring the real estate because the share purchaser also would be liable for the previous debts of the company. In such as case there will be a need for further and more detailed due diligence of the company and more safeguards and collaterals may be asked by the purchaser.

11. **On the sale of freehold interests in land does the benefit of any occupational leases and income automatically transfer?**

In case of a change of ownership taking place after the conclusion of the lease agreement for any reason, the new owner becomes automatically a party to the lease agreement under Code of Obligations. (“Sale does not void rent” rule) However, the new owner of the real estate
may terminate the lease agreement for necessity of owner’s spouse, first degree relatives, legally dependents and himself/herself. In such case, the new owner should send a termination notice within 1 month after the transfer and the new owner can terminate the agreement by filing a lawsuit after 6 months.

- Rule of “Sale does not void rent” does not apply to the expropriation process.
- Another issue about the rule of “Sale does not void rent” is if sale is realized after the lease agreement has been established but the tenant has not actually occupied the leased property, then subjective impossibility will arise and the former owner will be obliged to pay compensation to the tenant but the tenant will not be able to use the property due to the owner change.

12. **What common rights, interests and burdens can be created or attach over real estate and how are these protected?**

Annotations, rights in rem and declarations which are determined by laws can be registered in land registry. The main rights in rem are described under Q4.

It is possible to annotate some of the personal rights, limiting right of disposition. These annotations could be established for a definite time. Some of these are briefly explained below.

The contractual pre-purchase right gives its holder the right to file a case for the transfer of the real estate, in case the real estate is sold to a third party.

The right of purchase is the right which gives its holder the right to purchase the real estate with an ex-parte statement.

Contractual right of repurchase annotation provides to its holder the right to buy the real state which is sold previously by itself to the seller.

Family home annotation limits disposal rights of the owner and he/she cannot transfer the real estate to the third party without a prior consent of his/her spouse.

Lease annotation ensures that the new owner cannot ask the tenant to evict the real estate based on the transfer of the real estate which is explained under Q11.

The preliminary contract for sale annotation prevents the transactions of selling, seizure, mortgaging etc. for five years after the date of annotation.

The matters to be declared are determined in the Land Registry Regulation, but there are also regulations in the Law of Property Ownership, Cadastral Law and other laws. For example if the real estate is a historical building, this information is to be found at the
13. **Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised**

In Turkey the concept of “beneficial ownership” doesn’t exist. The owner is the person registered in the land registry.

14. **What are the main taxes associated with commercial real estate ownership and transfer of commercial real estate?**

Both the seller and buyer have to pay real estate transfer tax, which is normally set at %4 of the declared value of the real estate. In theory, this is shared equally between the buyer and seller, so each party shall pay %2, however in practice it is mostly borne by the buyer. There is a service fee of TRY 128,00- as a fixed fee.

However, the government has temporarily reduced real estate transfer tax to 3% until 31.12.2019 to support the real estate market due to decreasing sales numbers.

VAT is payable on the sale of real estate if the seller is a legal entity. The VAT regime may sound complicated because VAT rate is based on the type of the property, square meter of the property, price per square metre of the land as determined by the local municipalities, when the construction permit is obtained. Basically;

- Commercial property sales are subject to 18% VAT
- Residential property sales are subject to 1%, 8% or 18% depending on above criteria such as whether the property is smaller or larger than 150 m2

As the government lowered the real estate transfer tax temporarily to 3% to support the real estate market, the VAT of 18% above has also been temporarily decreased to 8% until 31.12.2019.

In order to support the real estate market, the government decreased the stamp duty rate to 0% from 0.948% for real estate related contracts such as preliminary sales contracts, land share agreements, real property sale contracts with advance payments from projects which the construction of which is ongoing, etc.

On the other hand, there are some taxes arisen from the ownership of the real estate. The real estate tax rate varies between 0.1% and 0.6% depending on the type of real estate (land, household or business premises). Environmental Cleaning tax is collected by the relevant municipality. The rates of this tax vary depending on the type, size and location of the real estate.
Electricity and gas consumption tax. The rate for this tax varies between 1% to 5% of the price of electricity and gas consumed. Electricity and gas generation and distribution companies are exempt from this tax. Electricity and gas distribution companies collect the tax and transfer the money to the relevant tax office.

15. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

In Turkey, freedom of contract applies to the real property lease relationships provided imperative provisions are reserved which aim to protect the tenant. No matter the leasing is commercial or not, there is no formal requirements for execution of a lease agreement; the parties can come an agreement even verbally. On the other hand, in commercial lease agreement parties usually make the agreement in writing to avoid any misunderstanding and to have evidence.

If the real estate to be leased is a store in a shopping mall, turnover rent (and also a minimum fixed rent is paid in case the turnover rent is below it.) is more common. Otherwise parties almost always agree on a fixed rent.

The parties can freely determine the rent type and the amount, however the regulation set a limit for the increase rate. Under Code of Obligations, rent indexation clauses will be valid if the indexation does not exceed the increase in the previous year's producer price index.

Unless the parties have agreed otherwise, the tenant cannot, partially or as a whole, transfer or provide the leased property, or assign the lease agreement to third parties without the consent of the landlord.

In general, there is no restriction on the length of lease terms. Leases can be made for definite or indefinite periods. However, the duration of the term affects the stamp duty to be paid by parties, the right to evict the tenant and unilateral termination of the lease. Lease contracts for a definite term are automatically renewed based on the same terms, unless the tenant notifies the landlord 15 days before the lease termination date that it will move out the premises. The landlord has a limited number of grounds to evict a tenant, unless the tenant violates the lease agreement. However, in the case of a lease contract whose initial lease period has expired and been renewed for ten continuous years, the landlord can decline to renew the lease agreement with a three-month notice to the tenant before the expiry date of the renewed lease term.

Landlords are required to pay any taxes relating to the real estate, and in case of a residency, provide the obligatory insurance (Earthquake Insurance), to bear any ancillary costs relating to the leased property (repair etc.). On the other hand, the tenant is required to pay lease amount, the monthly common expenses and environment tax.

In terms of explanations made above, please note that application of some articles (such as restriction on rent increase rate) related to the commercial leases are suspended until
Another issue needs to be mentioned is that with a Presidential Decree dated September 12, 2018, on the Amendment of Decree No. 32 on the Protection of the Value of the Turkish Lira, having real estate sale or lease agreements (besides some other types of agreements) in any foreign currency or indexed to any foreign currency has been prohibited for 2 years. Furthermore, existing lease agreements had to be converted to TRY until October 13, 2018. The relevant communique issued based on the Presidential Decree states that if parties of an existing lease agreement cannot mutually agree on the lease amount in TRY, the Turkish Central Bank’s effective foreign currency exchange rates on January 2, 2018 ($ 1 = TRY 3.7776 TL and € 1 EUR = TRY 4.5525) shall apply and the TRY amount calculated based on these rates shall be updated by application of the monthly consumer price index rate (as determined by the Turkish Statistical Institute) from January 2, 2018, until the date of determining the new lease amount in TRY.

16. **How are use, planning and zoning restrictions on real estate regulated?**

In Turkey, there are different kinds of zoning plans and they are regulated by different public institutions based on their type. On the other hand, the local municipalities are regulating the application-zoning plans and these include the necessary details for the construction. Under the zoning legislation, the construction projects must comply with the conditions stated in the relevant zoning plans. Those undertaking a construction projects must obtain a building permit from the local municipality or from the special provincial administration depending the location of the real estate. In order to use a building after the construction is finalized, a usage permit must be obtained from the relevant authority which issued the building permit.

17. **Who can be liable for environmental contamination on real estate?**

The main environmental legislation in Turkey is the Environment Law, adopted on 9 August 1983.

The ground principle of the law is that persons who harm the environment must compensate. However, mainly because of the unsuccessful implementation of the law and the absence of relevant sub-regulations, environmental obligations have not been strictly applied until recently.

Environmental insurance is available. However, these insurance packages are more related to industrial environmental obligations and do not attract commercial real estate purchasers.

Environmental Cleaning Tax (Çevre Temizlik Vergisi) is regulated under the Municipality Revenues Law (2464) and is paid by the owner or tenant who uses the property.
18. **Is expropriation of real estate possible?**

In order to conduct the public services and for public interest, the administrations can expropriate the real estates, resources and easement rights provided that their values are paid in cash or instalments. In case the parties cannot reach a settlement about the value, the administration shall apply to the court of first instance where the real estate is located and shall request for the determination of the expropriation value and registration of such real estate in the name of the administration provided that the expropriation price determined by the court is paid in cash or in instalments. After the determination of the price the judge grants 15 days to the Administration to pay the amount agreed between the parties or set by the court as the expropriation price. The court orders the registration of the real estate in the name of the administration and the payment of the value to the owner, upon the submittal of the receipt by the administration indicating that the amount is deposited in the name of the owner or blocked in the bank account to be given to the owner. This decision shall be notified to the title deed office and the related bank. The order of such registration is final but the parties can appeal the order only in terms of the expropriation price.

19. **Is it possible to create mortgages over real estate and how are these protected and enforced?**

Mortgage is the main method used for financing a real estate and it can be created as security for any kind of debt, present, future or contingent.

In practice, if a bank loan is used to acquire a real estate, the bank usually request an adequate guarantee for the loan or establishment a mortgage on the relevant real estate. To create a mortgage over real estate, the agreement should be signed in front of the land register offices and it should be registered to the land registry. The mortgage can be cancelled through demand of the lender, due to expiration, due to expropriation etc.

As known, the main aim of the mortgage is to foreclosure in case the debtor does not pay the debt on due. In such case, the lender applies to the relevant Execution Office for cash-in the mortgage and the Execution Office serves a payment order to the debtor and requires payment of the debt, together with default interest and legal charges thereon. In case no objection or payment is made the Execution Office appoints experts to evaluate the market value of the real estate. After completion of the necessary foreclosure proceedings, the Execution Office decides on the dates of public auctions (2 auctions take place) for the sale of the real estate. In both auctions, at least 50% of the market value determined by the experts is required to be offered. In case such offers are obtained by the Execution Office, the real estate will be sold to the highest bidder and such bidder will be required to pay the amount of its bid in cash to the Execution Office and the Mortgagee will receive its receivables according to the regulations in the relevant Law.

20. **Are there material registration costs associated with the creation of mortgages over**
The title deed fee (%0.455 of the contract value as for 2019), stamp tax (%0.948 as for 2019) and fix fee are compulsory material costs in creation of mortgage over real estate.

21. **Is it possible to create a trust structure for mortgage security over real estate?**

A foreign entity can lend money to a borrower and have a mortgage security over a real estate in Turkey only if such entity can provide to the land registry a document obtained from the relevant authority in its own jurisdiction stating that such entity can have mortgage security in its favour and is authorized to lend money.

22. **What is the main legislation relating to commercial real estate ownership?**

The main laws governing real estate in Turkey are: (i) the Turkish Civil Code (Law No.4721, dated 8 December 2001), (ii) the Law of Title Deed (Law No.2644, dated 22 December 1934); and (iii) the Condominium Law (Law No. 634, dated 2 July 1965).