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Real Property Investment Law in Turkey



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TITLE**Ownership***Full ownership*

The owner may hold the full ownership (in Turkish "*tam mülkiyet*") or a certain percentage of the ownership of property in co-ownership with third persons.

Co-ownership

It should be noted that co-ownership (in Turkish "*müşterek mülkiyet*") of real property, including for example shopping malls, is common in Turkey. Accordingly, this issue should be specifically taken into consideration in connection with any acquisition of commercial property in Turkey as co-ownership may have a material impact on the rights and obligations attached to such title. In this respect, it is worth noting that if co-owners cannot agree on the use, sale, or possession of the property, they may have to go to court to resolve the matter in a partition action. In a partition action, the co-owner asks the court to split the property in a fair and just manner. As real property may be difficult to divide and partial interests may be difficult to sell, a court will usually order that the real property be sold and proceeds from the sale distributed to the co-owners in relation to their interests.

Ownership in common

Ownership in common (in Turkish "*iştirak halinde mülkiyet*") is relevant mainly in case of inheritance.

Flat ownership

Flat ownership (in Turkish "*kat mülkiyeti*") allows the division of a building into private parts which belong to their respective owners and common parts which are owned jointly by all the co-owners. The neighbours share co-ownership of the common parts, such as the outside walls, the land, the roof and so forth.

The management plan of the co-ownership divides the property into private parts, common parts, and common parts used by certain co-owners only.

Transfer of ownership*Acquisitions*

In order to acquire title to a property, an application has to be submitted in advance to the title deed registry of the location of the property. After the terms of the transaction are agreed upon between buyer and seller, both parties go to the title deed registry office to register the transaction and the transfer of title. The seller receives the payment of the purchase price immediately upon transfer of title before the title deed registry office. It is compulsory for both sides (the seller and the buyer) to be present or to be duly represented by means of proxy.

It is strongly advisable to carry out a due diligence at the title deed registry so as to ensure that the seller owns the property and that there are no outstanding liens, mortgages, or other encumbrances over the property in advance of a sale.

Acquisition of real estate by foreigners

The acquisition of real estate in Turkey by foreigners is subject to certain limitations. Foreign controlled Turkish companies benefit from a liberal regime.¹

Limitations with respect to the acquisition of real property by foreigners

Foreign legal persons have the right to buy real property and/or to benefit from real rights for an indefinite period of time, on the condition of reciprocity and subject to a limitation to 2.5 hectares in total in Turkey. For acquisitions up to 30 hectares, a decision of the Council of Ministers is required. Legal inheritance is an exception.

Companies having legal personality established in foreign countries according to the laws of these countries can acquire real property and limited rights over real property in Turkey according to the provisions of special laws. The most significant grounds under Turkish law allowing foreign legal entities to acquire real property or other rights over real property are Article 87 of the Oil Act² and Article 8 of the Encouragement of Tourism Act³. Article 87 of the Oil Act allows commercial oil corporations which carry relevant authorization to acquire private property situated in an oil field. Article 8 of the Encouragement of Tourism Act allows foreigners to acquire real property and other rights over real property such as rights of access in touristic regions.

Foreign investors are subject to equal treatment with domestic investors.⁴ Therefore, companies with foreign capital that are duly established in Turkey are not considered to be foreign companies, but Turkish companies. Hence, companies with foreign capital established in Turkey may freely acquire real property or rights *in rem* in areas where Turkish citizens can themselves acquire real property.

Restrictions with respect to the acquisition of real property by foreigners

The Military Forbidden Zones and Security Zones Act⁵ sets out geographical restrictions on real property acquisitions by foreigners in Turkey. It is not possible to sell, transfer or rent real property located within military forbidden zones and security zones, to foreign individuals or legal persons.

INTERESTS IN REAL PROPERTY CAPABLE OF REGISTRATION

An annotation (in Turkish “*şerhler*”) in respect of the real property is capable of registration only if its registration is permitted by law. All annotations registered with the Land Title Registry are opposable to any third party, including a new owner acting in good faith.

The annotations capable of registration are enumerated and limited by Article 1009 of Turkish Civil Code. Therefore, the annotations capable of registration are rights arising from a sale of land and associated building agreements; pre-emption right arising from an agreement; right of purchase arising from an agreement; equity of redemption; mortgage lien; in case of ownership in common, the resolutions regarding the management of the property, its use and the right to benefit from the property; in case of ownership in common, agreements related to the continuation of the ownership in common; right of recourse from a grant; lease of the property; easement and promise to sale agreements.

¹ Article 35 of the Land Registry Act (Law No. 2644).

² Act number 6326.

³ Act number 2634.

⁴ Article 3 of the Foreign Direct Investment Act (Act number 4875).

⁵ Act number 2565.

DEVELOPMENT OF LAND

The process for rezoning agricultural land to buildable land

The Reconstruction Act 1985⁶ requires that any rezoning should be decided by the Ministry of Public Works and Settlement (in Turkish "Bayındırlık ve İskan Bakanlığı") upon proposition of local administration and should be published in Official Journal in order to be in force.

Building construction license

Under the provisions of the Reconstruction Act 1985⁷, a building construction license (in Turkish "Yapı Ruhsatı") must be obtained for all buildings from either the municipality or the governorship of the province.

In order to obtain a license, an application must be made to the relevant authorities by submitting the title deeds, the architectural drawings, the structural drawings, and the electrical and mechanical installation drawings. If the application is complete, the authorities normally grant the permit within 30 days at the most. If the application is incomplete or irregular in any way, the permit will be issued only after the deficiencies or errors have been remedied. A fee is charged for the construction permit. This fee is not significant.

The constructor is obliged to start construction operations within two years as from the issuance date of the construction permit, failing this, a renewal of the permit must be requested. The constructions have to be completed within five years as from the date of the permit.

Permit to use the construction

In addition, the owner of the construction is obliged to obtain a permit to use the construction (in Turkish "Yapı Kullanma İzin Belgesi / İskân Belgesi") at the end of the construction. This permit is granted by the governorship and by the municipality. Both authorities examine the compliance of the building with the construction permit. The date of the permit to use the construction is the date of the end of the construction. The electricity, the water and the sewerage systems are not provided to buildings for which the permit to use has not been granted by the competent authority.

FINANCIAL LEASES

Leasing is regulated in Turkey by the Financial Leasing Act⁸, and only this type of leasing can be used. There is no legal framework for operational leasing.

The asset under financial leasing remains the property of the landlord; the tenant is granted an exclusive right to use such asset. The ownership is transferred at the end of the term of a lease for a predetermined price. Furthermore, it is worth noting that 100% financing is possible, interim / progress payments are available, the full cost of the equipment is paid and the tenant is able to depreciate.

⁶ Law no. 3194 of 3 May 1985 (in Turkish "İmar Kanunu").

⁷ Law no. 3194 of 3 May 1985 (in Turkish "İmar Kanunu").

⁸ Act number 3226.

COMMERCIAL LEASES

No specific statute

Commercial leases are not specifically regulated in Turkey. Leases are governed in general by the Code of Obligations and specifically by the Real Property Rentals Act 1955.⁹ Therefore, practice is highly diversified and based mainly on the standard provisions of the Turkish Code of Obligations. The contents of the lease contract is therefore critical. In the absence of specific provisions, lease agreements are regulated as follows.

Form

No specific form is required. Leases may be drawn up by a notary public. A lease must clearly specify: the names and addresses of the landlord and tenant, the address and location of the rented property, the purpose for which it will be used, the amount of rent, the date the lease will become effective, and the period for which it is valid.

Duration

Leases may be entered into for any period of time.

Termination

The landlord may sue the tenant and demand the vacation of the premises in the following cases:

- the tenant does not pay two instalments of rents within a one year term and a summons has been sent by the landlord to the tenant through a notary public;
- the tenant transfers or sublets the premises in whole or part to third parties without the landlord's prior consent;
- the tenant notifies the landlord in writing that he will vacate the premises but does not do so (in such case, the landlord may apply to the bailiff for the vacation of the leased property);
- the landlord sends to the tenant a summons through a notary public for the breach of the lease contract (in Turkish "*Akde Muhalefet*") and the tenant fails to remedy such breach.

Besides, the landlord may terminate the lease contract at its term in the following cases:

- the landlord states that he needs the premises for his personal use, either for the purpose of a residence or a business place;
- the landlord states (with relevant proof) that he will reconstruct/restore the building.

In the event that ownership changes, the new owner of the premises may notify the tenant within one month as of the date of purchase, his intention to terminate the lease contract either within six months as of the date of the purchase or at the term of the lease contract (as the nearest date may be), if he states that he needs the property for personal use.

Right of renewal

The tenant has a statutory right of renewal, unless otherwise provided by the agreement. He is entitled to renew the lease at the end of each lease period for one year under the same terms and conditions, with 15 days prior notice before the end of the annual period.

⁹ Law no. 6570 of 18th May 1955.

No pre-emption right of the tenant

Turkish law does not grant tenants pre-emption rights over the premises.

Rent and rent caps

Rent of commercial premises is not specifically regulated in Turkish Law. Leases are governed in general by the Code of Obligations and specifically by the Real Property Rentals Act 1955.

Rent review

Turkish law does not govern the indexation of the rents. The parties may agree upon an annual rent indexation, even if the rent is determined in foreign currency. In practice, the indexation rate for rent in Turkish Lira is the annual inflation rate published by the State Statistics Institute and for the rent in foreign currency from 5 to 12% as negotiated with the landlord.

Costs rechargeable to tenants

Market practice is that the landlord is usually responsible of the expenses of replacement, additions, and permanent repair for the installations in the leased premises and in the building. The tenant is usually responsible for repair of common installations which may occur due to normal use. However, Turkish law does not prevent all expenses being recharged to tenants by way of contract.

Transfer

Transfer of the lease by the tenant without the prior consent of the landlord is not permitted.

Sublease

Subleases without the prior consent of the landlord are not permitted.

Use

The tenant may not change the use of the leased premises without the owner's consent. The tenant must generally exercise his rights in accordance with proper management principles.

Maintenance

The tenant must carry out the requisite repairs in order not to deteriorate the leased premises.

TAX**Transaction costs***Sale of land and buildings*Title deed transfer charge

A tax of 1.5% is payable on the sale of the real property. This charge is payable by both the buyer and seller. Thus, the total title deed charge over the property that has to be paid is 3%. This rate is also applied if the property is contributed as capital in kind to a company.

Stamp duty

Stamp duty is calculated over the sales price of the real property indicated in the asset purchase agreement (if any) at a rate of 0.75% with a ceiling of TRY 946,915.20 (approximately EUR 515,000) for the year 2007 subject to annual re-evaluation. Each original copy of the agreement is taxed separately.

VAT and other taxes

General rate

If the seller or the buyer is a company, value added tax at a rate of 18% is paid by the company in addition to the above charges / duties.

Besides a floating capital tax is paid which varies depending on the location of the property.

VAT exemptions

However, there are certain VAT exemptions applicable to real property such as:

- the sale of real property by individuals who are not estate agents;
- the delivery of offices and factories that are built in Organized Industrial Zones or Small Industrial Villages;
- the sale of immovable property by the State;
- the sale of real property by the corporate entity if (i) the property is owned by the company for a minimum of 2 years and (ii) the consideration for the sale of this property is added to the share capital.

Reduced VAT

The sale of houses with a total surface area of 150 sq. m. or less, and the delivery of houses to housing cooperatives are subject to VAT at the rate of 1%.

VAT, if incurred by non-resident companies, cannot be offset or recovered, and should be considered as part of the acquisition cost.

Taxation of capital gains

Capital gains realised by individuals

A capital gain generated from the sale of real property that is held by the vendor for at least four years before the date of sale, is exempt from tax. The standard rate of tax is identical to the rate of personal income tax - that is from 20% to 40%.

Capital gains realised by companies

On the sale of real property, if (i) the real property is held for more than two years and (ii) the sale price is added to the share capital, the capital gain generated from such sale is exempt from tax.

The standard rate of tax for a corporation is 20%.¹⁰ When calculating capital gains, the purchase price (including related costs) of the real property sold is adjusted in line with the rise in the index from the date of purchase to the date of sale. Capital gains tax is calculated only on the actual profit.

¹⁰ Article 32 of the New Corporate Income Tax Act 2006.

However, it is worth noting that pursuant to the New Corporate Income Tax Act in order to benefit from this capital gains exemption, the condition of capitalising the sales profit is abolished; instead sales profit must be booked in a special reserve account for at least five years. 75% of the profit is subject to tax exemption. The exemption is applied in the period in which the sale takes place. If the sales revenue is not collected within two years, or the related profit is withdrawn from the special reserve account, or transferred to any account apart from the paid-up capital, the taxes not accrued at the time will be claimed back with penalties.

Leases

Stamp duty

Stamp duty applies to lease agreements and is levied at 1.5% (or 7.5% in cases where the agreement provides a guarantor) of the aggregate amount of the rent to be paid in accordance with the duration of the contract.

Stamp duty is payable by the parties who sign the agreement. Each original copy of the agreement is separately subject to stamp duty.

Rent

Rental payments to individuals by tenants, who are legal entities, are subject to a 22% withholding tax.

Besides, rental income of individuals is subject to personal income tax - that is from 15% to 40%. The rental income tax of legal entities is subject to the regular 20% corporate income tax, as from 1st January 2006.

Rental payments to landlords, who are legal entities, are subject to VAT at a rate of 18%.

Real property tax

Real property tax returns are filed every four years. Annual taxes are paid in two equal instalments, with the first instalment in March, April or May, and the second in November.

Real property in Turkey is taxed according to the purchase / sale value.¹¹ The taxable basis for properties is subject to annual revaluation based on government determined levels.

Annual property tax rates are as follows:

- residential buildings 0.1%
- buildings 0.2%
- land 0.3%
- fields 0.1%

The rates are doubled for property located in the metropolitan municipalities.

The taxable basis for property taxes is the tax value of the property, which is defined as the value of the property at the time of the annual declaration. The property tax payable may not be less than the taxable amount calculated on the basis of the minimum value determined for the area by the special valuation commission of the local municipality.

¹¹ Real Estate Tax Act 1970 (Law No. 1319 of 29 July 1970).

LEGAL COSTS REGARDING REAL PROPERTY ACQUISITIONS

Real property transactions usually involve the following costs:

Notary fees

Notarial deeds are not required for real property acquisitions.

Lawyers

Generally, lawyers perform a legal due diligence and prepare the sale purchase agreement. Usually, the lawyer's fees for drafting a sale purchase agreement depend on the value of real estate. International law firms' fees are usually calculated on the basis of hourly rates.

Land registry

Land registry fees are 1.5%. This charge is payable by both the buyer and seller. Thus, the total title deed charge over the property that has to be paid is 3%.

Publication

There is no specific obligation to publish the transfer of real property.

SECURITY USED IN REAL PROPERTY FINANCINGS

In Turkey mortgages are the most commonly used security in real property financings. A mortgage may be granted as security for the repayment of existing (in Turkish, "*karz ipoteği*"), or future loans (in Turkish "*teminat ipoteği*").

The terms of a mortgage are entered on the title deeds and represent a limited right over that property. Mortgaged real property may be sold, but the buyer must accept the terms and conditions set forth under the mortgage agreement.

Real property may also be mortgaged more than once. In any case, the order of the mortgage must be registered on the title deed. A tax of 0.36% of the debt to be secured under the mortgage agreement is payable on the registration of the mortgage.

The New Mortgage Act for the acquisition of houses

The Parliament passed the Mortgage Act 2007 on Wednesday 21st February 2007. This new act is expected to help people own their own homes by paying instalments almost equal to their monthly rents.

The consumer will be presented with two options of interest rates, fixed or variable. Those who choose the fixed interest option will pay the same amount for all of their monthly instalments and will not carry the risk of huge hikes in the interest rates. The initial interest rate will not change unless the two parties agree to do so. For the variable interest option, however, if the interest rate goes below or down to a certain level, the bank will arrange the rates of the debt accordingly.

Besides deposit, investment and participation banks, consumer financing companies will also be able to provide mortgage loans. They will have to wait for six months after the law comes into force.

Loan supplier institutions will always present the customers with a document of information about the loans. These forms will include all information about interest rates, possible payment schedules, etc. in detail. Loans will not be given without cash payment.

For the customers who fail to pay their debt for two consecutive months, the banks will give an extra month before they start the procedure to sell the encumbered house. The bank will clear its own receivable first and will give the remaining money back to the customer.

Those who want to close up their mortgage debts will pay the capital money plus a 2% commission. Consumers who had undersigned a house loan or a leasing contract may have the right to request exemption from the system within three months after the law comes into force. Any contract, for which the customer did not apply for exemption from, will be automatically binding by the law.

The value of the house will be determined by an independent expert. These experts must have high education in the field and must have a certificate of competency. Only the houses that have certificate of occupancy from municipalities and being in compliance with the provisions of construction regulation related to earthquake will be able to benefit from mortgage system.

Banks will securitize the mortgage loan contracts and these securities will be transacted in the second-hand market on the Istanbul Stock Exchange.



About the Law Firm

Gide Loyrette Nouel is an international law firm that has been advising real estate investors since 1920. Gide Loyrette Nouel has been present in Central and Eastern Europe since 1991.

About the Author

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