TURKEY — LEASES

A lease of real property (immovable) is governed by the Turkish Code of Obligations (TCO) (originally enacted in 1926 and to be replaced by from July 1, 2012 by the new Code of Obligations 2011), which applies to most commercial contracts. The new code will provide for many changes that are found in most EU Civil Code countries, such as requiring Good Faith in contract, providing for unfair contract terms and introducing set-off provisions. A lease is governed also by the Real Property Rentals Act 1955 (Law no. 6570 of 18th May 1955) (sometimes translated as the 'Real Estate Leasing Code'). However, this law will be superseded by the provisions of the new Code of Obligations.

Generally there are no restrictions on any individual or legal entity entering into a lease. A lease is governed by the rule of 'Freedom of Contract' so that a lease may be entered into on such terms as the parties agree, provided that does not violate the provisions of a Turkish Code or Statute.

A lease may be granted for any period of time. This may be a fixed term (a number of years or parts of a year), or as a periodic lease (year to year, month to month, week to week). If the term is not clearly defined it is assumed to be an 'agreement for a 1 year term". A lease granted by a government entity is generally limited to 49 years, usually with an option for the lessee to extend for the same term.

Typical commercial lease terms and conditions are:

Formalities

A lease may be made orally or in writing. Most commercial leases are made in writing. A lease may be protected by an annotation (*serh*) at the Land Registry. A lease for a number of years may be made by notarial deed (*notarial senedi*) and any lease should be registered at the Land Registry and Cadastral (*Tapu ve Kadastro*) to protect it against the sale of the landlord's interest to another party.

The cost of registration is normally paid by the tenant as it will protect the tenant in the event of a change in ownership (unlike land registration cost which is borne equally by the parties). Otherwise, after the transfer of title, the landlord may be able to evict a tenant by giving six-months notice in writing.

Disputes are normally resolved in a court of law. Arbitration is not common for lease agreements.

Term

Typically 3 to 5 years for offices. 5 years for retail leases[1]. If no term is agreed, a lease is taken to be for a term of one year.

Termination

A lease may be terminated in accordance with the terms of the lease agreement or as agreed by the parties.

The tenant may terminate the lease at any time by 15-days notice, unless there is an agreement to the contrary,

The landlord may only terminate the lease as provided under the terms of the lease and then only by recourse to a court of law. Unless the lease has expired or notice to quit is given under the provisions of the lease, the tenancy may only be terminated for a major breach of a covenant (non-payment of rent, assignment or subletting without consent) or a failure to comply with a condition of the lease after due notice (a*kde muhalefet*) from a notary public. In any event, the landlord has to obtain a court order if the tenant does not voluntarily surrender possession.

At the end of the lease, the lessor may be able to obtain possession if the premises are genuinely required for his own use (as a residence or as a place of business), or for redevelopment or restoration (for which proof of intent is required).

See also 'Right to Renew' below.

Right to renew

As provide in the lease.

If there is no provision to the contrary, the tenant has an automatic right to a new lease for a term of one year upon the same terms and conditions, subject to the tenant providing 15-days notice prior to the expiry of the term. The same right is provided to a tenant who has a lease that had been granted for a fixed term. The rent for the extended term may be increased in line with the consumer price index.

The new TCO provides an automatic right for the landlord to terminate the lease after it has continued for ten years, subject to the provision of three months prior notice (although this provision does not come into immediate effect).

Rent

Payable in advance. Usually monthly.

There are no rent controls for commercial leases.

Rent revision

Generally annual increases based on an agreed index (e.g. CPI or a construction cost index). Alternatively, an annual increase may be provided for in the lease (either as a specified amount or a percentage increase). A lease in a foreign currency cannot be increased during its term, except by a fixed annual amount as agreed at the outset. Upon expiration the rent may be varied by agreement or, failing agreement, by recourse to a court of law.

Measuring basis

gross internal area (GIA) or **net lettable area (NLA)***

Security deposit

Commonly 3 months, cash or bank guarantee.

Repair

As agreed and set out in the lease. The tenant is generally responsible for all repairs to the demised premises, except in the case of a short lease. Repair to the common parts is normally carried out by the landlord and recharged to the tenant either directly or as part of the operating expenses. **Structural repair** is generally paid by landlord (although the lease may provide for this cost, or any other cost, to be recharges to the tenant. Landlord is required to ensure that the premises are maintained in a condition that makes them suitable for the purpose for which they were leased.

Service Charges/ Operating Expenses

Commercial leases are normally 'net' or 'net net' with all repairs, operating expenses and the cost of insurance being payable by the tenant, either directly or by recharge through the operating expenses.

An advanced service charge may be payable based on the budget estimate at the start of the lease. At the end of the financial year reconciliation is made between the advanced charge paid and the actual expenses and the future annual cost is adjusted accordingly.

Insurance

Normally the responsibility of the landlord and the premium is recharged to the tenant. Tenant are normally required to insure such items as glass windows or doors, fixture, and may be required to carry **public liability insurance** in the name of both parties.

Assignment/ subletting	As set out in the lease. Unless permitted under the lease, premises may not be assigned or sublet without the landlord's written approval. As a rule, the landlord has an absolute right to refuse consent to an assignment, subletting or share of the premises, although the court may permit an assignment in exceptional cases. If the premises are sublet or assigned without consent the lease may be terminated by the landlord, which may also include possession from the sub-tenant or assignee.
User	The use of the premises is normally set out in the lease. Any change of use will require the landlord's consent, which he normally has the absolute right to refuse.
Agent's fees	1% - 3.0% (subject to negotiation).
Legal expenses	Usually based on an hourly basis. Generally around 1% (depending on size and nature of transaction). A notary fee may be required to notarise a legal document.

*Exact method of measurement vary from country to country (the most common methods are: The Royal Institution of Chartered Surveyors, *Code of Measuring Practice: A Guide for Property Professionals* (6th ed. London: 2007) and the Building Owners and Managers Association International (BOMA), *Standard Method for Measuring Floor Area in Office Buildings* (Washington, DC: 1996).

The above are intended as a guide to lease terms for commercial property. Professional advice should be obtained in any particular case.

Offices

The prime office locations in the district of Levent.

Retail

The prime retail locations in Abdi Ipekçi Caddesi (Abdi Ipekci Street) in Nişentaşi.

[1] Retail leases for three to five years commonly provide an option for the tenant to break after the first year, with a break at the end of the second year for a five-year lease. Shopping center leases may provide the tenant with a right to break if the number of visitors to the center fails to reach a target level or, when there is a **turnover rent**, the landlord may be able to terminate the lease if the tenant's turnover falls below an agreed level. Some form of turnover rent is common in a shopping center, usually a **base rent** (below market rent) is payable, and an increased rent, based on a percentage of turnover, is payable equal to the amount by which the 'turnover rent' exceeds the base rent.

Terms in **bold** are defined and explained in the Encyclopedia of Real Estate Terms (Third Edition hardcopy and ONLINE)

See also: "An overview of the **Legal System** and aspects of property law in Turkey".

Further information may be found in our **Bibliography for Turkey**.

This information is intended as an introductory guide and is intended to point out issues that may be of interest to a foreign investor.
It does not constitute legal advice and should not be relied on as such. Professional advice is recommended on any issue referred to herein.

Also, please see Disclaimer.