

## TURKEY

### *Legal System*

The Turkish legal system follows the continental legal system of **civil law**. The Civil Code adopted by Kemal Atatürk in 1926 is closely modeled on the Swiss Civil Code. The law also developed under the influences of Swiss law (with the major amendments made in 2002 inspired predominately by revisions to the Swiss Code). The Code of Obligations was also modeled on the Swiss Code. The Criminal Code was based on the Italian Code and administrative law was predominately based on the French law. Developments of the law have drawn also on Greek and German influences.

The principal sources of law are the Constitution, the Civil Code and legislation. Legislation primarily comprises statutes, which may be supplemented by regulations and by-laws. Regulations must not conflict with legislation and by-laws must not contain provisions that conflict with primary legislation or regulations.

As with all civil law systems, the courts are required to interpret and apply the law. Codes and statutes are generally considered equal when interpreting applying the law, although, in the event of conflict, a Code may be considered slightly more significant. Precedent is not paramount, but may be considered by a judge in making a decision on a case. In particular, an inferior court is normally bound by the decision of a superior court. Books or articles of authority, ‘doctrine’, may also be brought into consideration.

Custom or ‘usage’ must be well established and must not conflict with statute law. Thus, it is rarely applied except at a local level of dispute. Thus, custom may be applied when there is an intention to divide produce between a landlord and tenant but no basis for the division has been agreed. Custom may also be applied in some commercial transactions, provided this does not conflict with the express terms of an agreement.

The Constitution is the supreme written authority and no law can be enacted that is in conflict with the Constitution. The current Constitution was enacted in 1961 and has been amended several times since then. The most recent major amendments were made in 2001 & 2002. The Constitution sets out a broad set of rules relating to the form and ideology of the state; the organs of government; fundamental liberties and political rights and the duties of individuals; and the relationship of the state to its citizens. It has limited direct application to real property (land and buildings), except in relation to legal procedures. However, Article 35 does provide:

Everyone has the right to own and inherit property.

These rights may be limited by law only in view of public interest.

The exercise of the right to own property shall not be in contravention of the public interest.

### *Contract law*

Contract law is governed by the Code of Obligations (CO), which covers the law of persons, family, succession, contract, tort, unjust enrichment and property. This code stipulates (Art. 544) that it is an inherent part of the Civil Code. In relation to contract law, as with all continental Civil Law, the CO follows the tradition of Roman law: (1) The law upholds the principle of freedom of contract (freedom to contract or not, as well as the freedom to choose the content of the contract); (2) a contract does not have a ‘translative effect’, i.e. a separate act is required by the same parties to effect the transfer of property; (3) a contract requires a **consensus ad idem** (agreement as to the same thing or a ‘meeting of the minds’); (4) a

contract is not required to be in any particular form.

The *consensus ad idem* may be considered similar to the common law requirement of **offer** and **acceptance**, but the principle supersedes it so that the intention of the parties is more important than the process and if the consent of the parties is clear, especially as supported by evidence a contract can come into existence. Unlike common law and French law, which require **consideration** or a *cause*, these are not essential; although if there is consideration it must be legal and must pass to the promisee. However, most contracts relating to real property must be in writing and title does not normally pass until a separate deed of transfer is notarized and the transfer recorded (transfer of physical control is effected by inscription in the land register).

One of the major problems with the Turkish legal system is the speed, efficiency and equitable aspects of the judicial process. This is acknowledged by the Government in the Medium-Term Plan (2011-2013) “The main objective in the context of the rule of law and the supremacy of law, is to provide legal services in a faster, more fair, reliable and proper way; to continue efforts to increase the quality of judgment process and its main pillars; to enable legal rules to serve as a means of protection, improvement and enhancement of the social order”.

## **Property Law**

### **Ownership**

Real property may be held as an absolute right (*tam mülkiyet*) or as a leasehold. Ownership may be of an area of land, an entire building, or a part of a building, as with a floor in an apartment in a building (*kat mülkiyet* – **condominium**). Property may be held as a sole right or in joint ownership (*müşterek mülkiyet*).

Foreign persons (individuals or corporate entities) may acquire residential or commercial real estate, or limited real property rights, in Turkey. However, there must be a reciprocal right of purchase by Turkish nationals in the country of the purchaser or the corporation purchasing property must have business relations with Turkey (which normally permits a company established in Turkey to acquire property in the same way as a Turkish company, even if it is under foreign control). As a rule, the property should be intended for use by a business or resident. As a rule, the requirement of reciprocity does not apply to the purchase of land, or real property rights, for tourist investment. There are restrictions on the purchase of land in small non-tourist villages; a purchase of land exceeding 25,000 sq. metres; and the purchase of land in an area that is considered a protected area (such as an area special cultural areas, areas of natural beauty, etc.), or an area designated for military ‘security’. A purchaser is required to provide proof of identity and, in most cases, a certificate of residence or proof of a business establishment in a foreign country.

Thus, prior to a purchase real property, or a real property right in Turkey, by a foreign individual or company (or a company that is controlled by a foreign entity) legal advice should be sought and a check made that the correct documentation has been obtained.

The transfer of title to property is normally made by notarial deed (*notarial senedi*) and the transfer does not take effect until registered at the Land Registry and Cadastral (*Tapu ve Kadastro*). Most other property rights (including mortgages, leases, rights of pre-emption, easements and other servitudes, and agreements to purchase real property should also be registered for protection against any other party who acquires an interest in the property).

A notable feature of property ownership in Turkey (especially in Istanbul) is a form of squatting where poor migrants from the countryside build on vacant land, predominantly publicly-owned, to establish a short-term home. Such buildings are referred to *gecekondu* (literally a ‘night building’ or ‘built overnight’) and are mostly built in run down industrial areas, on the hill sides around Istanbul (reducing the city’s green space), or along the edges of the motorways. If the building is roofed over, based on an old Ottoman law, the property cannot be immediately demolished and the authorities have to go to court to seek to evict the occupier. In many cases, such action is not taken and the situation may be exacerbated by the occupier permitting another to build another floor above, resulting in a plethora of two to five-story buildings of poorly built homes and certainly not earthquake proof. In some cases the occupiers were evicted and the buildings cleared. However, in time, many of these homes were supplied with services and grew into established communities. In many cases, the authorities permitted the replacement of the old building by new apartments and the original *gecekondu* owners became owners of several units in high-rise buildings, with the benefit of legal title granted to the developers. On the other hand, many such properties remain part of established shanty town providing homes for the poor emigrants, dispossessed and a source for cheap labour.

### ***Easement/Servitude***

As with all civil law systems, other than the right of ownership, the other ‘restricted’ real rights to land are the **servitude** (a term that covers rights analogous to an **easement** and a **restrictive covenant** in common law); **usufruct**; **mortgage** and other **liens** over property. Certain other rights over land, such as an option or right of pre-emption and certain long-term leases are also considered real rights, especially those that have to be registered for their protection.

A servitude (*irtifak hakkı*) imposes a burden on property and may be personal or real (although in most cases they are real and as such must be entered on the land registry). Servitudes include such rights as a right of way or right of light that affects one property for the benefit of another and a restriction imposed on one property for the benefit an adjoining property (such a limitation on the size or height of construction). Personal servitudes may only be enforced by the parties to the agreement, whereas a real servitude may be enforced by anyone acquiring an interest in the lands affected.

A real servitude or easement (*gayrimenkul lehine irtifak hakkı*) requires two parcels of land; a dominant parcel that benefits from the right and a servient parcel over which the right or restriction is imposed. For example, a right of way that runs over the servient land to provide access to the dominant land. These parcels must be in separate ownership; the right must benefit the dominant land, i.e. it must not merely be a personal right; and the right should be clearly defined.

A usufruct (*intifa hakkı*) is a personal right that permits the use someone else’s land in the same way as the owner (the **usufructuary**—*intifa hakkı sahibi*), but without fundamentally changing the substance. It is a temporary right, in the majority of cases restricted to the life of the user or for a particular purpose, and, in the case of land, it is a real right. It includes the right of user (*usus*) and the right of enjoyment (*fructus*), but does not include the right to destroy or significantly modify the property (*abusus*). When the temporary period of use expires the land reverts absolutely to the owner (C. C., Art. 727). The right may be mortgaged and, normally, transferred to another. Usufruct may be granted also to personal property e.g. cattle.

## ***Mortgage***

A mortgage of real property, or hypothec (*gayrimenkul rehni* or *ipotek*), as in all civil law systems, is a real right over ‘immovable property’ which is encumbered for the performance of an obligation. The mortgage covers all of the land and buildings (including fixtures) and is enforceable even if the property is transferred to another, until the obligation is released and the charge is released. (The right is similar to a **charge** in English law and a **lien** or **deed of trust** as found in the USA.) In order to ensure the right is enforceable against a bona fide purchaser of the property the mortgage should be registered at the Land Registry (C. C., Art. 786). As a corollary, prior to purchasing a property the purchaser should obtain a certificate from the Land Registry to ensure that the property is free of any mortgage, lien or other encumbrance.

## ***Leases***

See “[An overview of commercial Leases in Turkey](#)”

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

Further information and references 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](#).