



Real Estate

in 30 jurisdictions worldwide

Contributing editor: Sheri P Chromow

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Turkey

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TRANSFER OF REAL ESTATE

1 Legal system

How would you explain your jurisdiction's legal system to an investor?

Turkey is a civil law jurisdiction. The civil procedural law requirement is that if the subject matter of a legal proceeding is above 2,500 Turkish liras, the written proof rule will be applicable and parties must provide written evidence to prove any issue of fact on which they depend. In the course of litigation, parties submit their petitions to the court in writing and argue their case during hearings. It is at the court's discretion to grant a preliminary injunction upon a party's request before or during litigation. If a party's rights are in jeopardy because of a delay to the lawsuit or if irreparable harm might occur in the absence of an injunction, the court has the discretion to rule on an injunction, usually in return for a security deposit.

2 Conveyance documentation

What are the legal requirements for documents recording conveyance?

It is not legally permissible to effect a sale of real estate between parties without involvement of the land registry office located where the real estate is situated, and parties may not execute private deeds in order to convey title. A seller of a property shall first file a written request with the land registry office to initiate the sale process. Subsequently, an official deed that is issued ex officio is required incorporating all of the information pertaining to the real estate and the terms of the prospective sale. It is also not possible to convey title on a conditional basis. Both the purchaser and seller will each have to pay a fee of 2 per cent of the real estate's sale value. It is, however, common in practice to demand that the purchaser incur the total fee amount as per the parties' agreement, especially if the sale price is determined on a net basis.

3 Foreign investors

What other factors should a foreign investor take into account in considering an investment in your jurisdiction?

Foreign ownership per se may be limited in certain sectors such as media ownership (ie, equity ownership by a foreign national in a radio or television broadcasting company may not exceed 50 per cent of the paid-up capital), provision of maritime brokerage services, etc. There are also restrictions applicable to direct ownership of real estate by a foreign person, foreign company, Turkish company with foreign shareholders and Turkish company with indirect foreign shareholding, as follows:

- (i) Direct ownership of real estate by a foreign person is subject to fulfilment of certain restrictions. A foreign natural person may purchase real estate in Turkey if he or she is a citizen of the countries identified by the Council of Ministers on an international bilateral-relations basis and in line with Turkey's interests. In any case, a foreign person may not acquire any real

property that is more than 30 hectares within Turkey provided that the size of such real estate is also not more than 10 per cent of the size of the country where the real estate subject to sale is located.

- (ii) Direct ownership of real estate by a foreign company is permitted only in limited cases, where foreign-company ownership is explicitly provided for in specific legislation (as opposed to a foreign person).
- (iii) If a foreign natural person or a foreign company or an international organisation holds or owns 50 per cent or more of the share capital of a company or control over the decision to appoint or dismiss the majority of directors having management authority of a company established in Turkey, that company may acquire real estate only for the purposes of conducting the activities stipulated in its published articles of association.
- (iv) In addition, if a company with foreign shareholding (as referred in (iii) above) holds directly or indirectly equity in a Turkish company, in the event that the ultimate partnership ratio of the foreign investor in the company being participated in is or exceeds 50 per cent, it may acquire real estate property subject to the same limitations as stated under (iii) above. The law provides that the principles referred to in (iii) above shall be applicable for a foreign investor if it acquires directly or indirectly 50 per cent or more of a Turkish company and the shareholding ratio of a foreign investor in an existing Turkish company with foreign capital reaches or exceeds 50 per cent or more as a result of a share transfer.

Furthermore, acquisition of real estate by a company or real person in military zones, security zones and strategic zones is subject to permission of the Turkish military general staff and the acquisition of real estate in private security zones is subject to the permission of the governorship of the zone in which the real estate is located.

Finally, if a foreign natural person or a foreign company is purchasing real estate and if there is no construction placed on the real estate, the owner has to apply to the relevant ministry and submit its plan for a proposed construction. If the construction plan that is submitted to the ministry is not finalised within two years, liquidation of the purchase will be applied to the relevant real estate.

4 Exchange control

If a non-resident invests in a property in your jurisdiction, are there exchange control issues? What about repatriation of capital?

Repatriation of net profit, dividend, sale, liquidation and compensation proceeds, transfer of fees to be paid in relation to licence, management and other agreements and payment of principle and interest on foreign-source lending is permissible under Turkish law provided that they are transferred through banks or financial institutions.

5 Legal liability

What types of liability does an owner of real estate face? Is there a standard of strict liability and can there be liability to subsequent owners? What about tort liability?

An owner has a strict liability towards a neighbour in the case of an abuse of ownership rights. This abuse may be environmental (air pollution, noise, etc) as well as any other prohibited interventions (such as blocking a view or right of passage). A finding of negligence by the owner is not required to assess liability. Even if the abuse could not be avoided by the owner, the damaged party can claim compensation. Another source of liability is for damages arising under environmental law for an owner acting as the polluter. This is also another form of strict liability where proof of negligence is not required. The liability under environmental law is for the polluter, regardless of the title of the damaging party; therefore, in addition to the owner, any beneficiary of the land may be held liable. Another form of strict liability is as structural owner against any third party. In this case the owner is responsible with regard to defects and deficiencies of the building causing a loss to a third party regardless of his negligence. In addition the owner may be subject to a third-party claim to take necessary precautions to prevent a structural danger affecting such third party.

6 Protection against liability

How can owners protect themselves from liability and what types of insurance can they obtain?

An owner of real estate may apply for personal liability insurance for coverage against material or physical damage to a third party (such as damage due to fall of material from the building of the insured to a passer-by or a third party's car). Another insurance option (for an owner or a tenant) is neighbour indemnity insurance. This insurance is limited to damage to a neighbour arising from the real estate of the insured. Furthermore, there is construction all-risk insurance. This type of insurance covers not only damage to a third party but also to the real estate itself during construction. In practice, this insurance is made only during the construction period and an additional clause may be agreed for environmental damage.

7 Choice of law

How is the governing law of a transaction involving properties in two jurisdictions chosen? What are the conflict of laws rules in your jurisdiction?

According to Turkish legislation, a legal transaction involving real estate or usage of such real estate in Turkey is subject to laws of Turkey as per universal principle of *lex rei sitae*.

8 Jurisdiction

Which courts have subject-matter jurisdiction over real estate disputes? Which parties must be joined to a claim before it can proceed? What is required for out-of-jurisdiction service? Must a party be qualified to do business in your jurisdiction to enforce remedies in your jurisdiction?

There is no specific jurisdiction rule regarding real estate disputes (except specific situations regulated under the Civil Procedural Law granting jurisdiction to the court of peace). The Civil Procedural Law stipulates cases to be heard by the civil court of first instance and the court of peace. As per the Civil Procedural Law, cases regarding assets and personal rights have to be heard before the civil court of first instance regardless of the value and amount in the dispute. In addition, as per the Civil Procedural Law, the following cases have to be heard by the court of peace:

- cases regarding disputes arising from rental contracts including but not limited to cases for collection of unpaid rental claims;

- cases regarding division of real estate or a moveable asset; and
- cases regarding protection of physical possession of the real estate.

In any event, the court where the real estate is located will have exclusive jurisdiction to hear the dispute.

Turkey is party to various bilateral and multilateral agreements regarding out-of-jurisdiction service. Depending on the country where that service will be made, the rule is that service shall be made to the Turkish Foreign Ministry, which then delivers the service to the corresponding authority of the foreign country via a diplomatic representative of Turkey.

A party may not need to do business or be qualified in order to enforce remedies with respect to a Turkish court judgment. However, if the plaintiff of a lawsuit is not a resident of Turkey and if there is no reciprocity (or treaty waiving such requirement) between the plaintiff's country and Turkey, then a security deposit may be required to initiate an action.

9 Investment entities

What legal forms can investment entities take in your jurisdiction?

Which entities are not required to pay tax for transactions that pass through them (pass-through entities) and what entities best shield ultimate owners from liability?

Typically a joint stock company or limited liability company is established in order to conduct business in Turkey. In addition, a foreign investor may sometimes establish a branch or a liaison office instead of forming a new company. In the case of a liaison office fit for only advertising and market research activities, no profits may be derived through the liaison office thus no tax is payable. In addition, another specific option is a real estate investment company (REIC), otherwise a joint stock company but specifically licensed pursuant to the capital market legislation. In the case of an REIC, there is corporate tax exemption pursuant to the Corporate Tax Law. A legal requirement for an REIC is that shares representing at least 25 per cent of its issued capital have to be listed for a public offering within three months starting from the date of registration.

10 Foreign investors

What form of entities do foreign investors customarily use in your jurisdiction?

Foreign investors usually prefer establishment of either a joint stock company or a limited liability company depending on the contemplated level of business activity. Neither form requires any minimum share ownership by Turkish shareholders. According to the new Turkish Commercial Code No. 6102 (TCC) foreign investors may establish a company in Turkey with single real or legal person shareholder.

11 Organisational formalities

What are the organisational formalities for creating the above entities?

What requirements does your jurisdiction impose on a foreign entity?

What are the tax consequences for a foreign investor in the use of any particular type of entity, and which type is most advantageous?

According to the TCC a joint stock company may be incorporated by a single shareholder (or more than one shareholder) with a minimum capital of 50,000 liras, whereas a limited liability company may be incorporated by one or more shareholders with a minimum capital of 10,000 liras. If these conditions are fulfilled, shareholders must apply to the Trade Registry Office with the application documents required by the relevant legislation. Irrespective of the type of the company, the corporate tax rate is 20 per cent of corporate income. A joint stock company is specifically preferred when shareholders with potentially conflicting interests form the corporation as a joint

venture. A limited liability company has fewer mandatory corporate governance rules and is therefore easier to administer as opposed to a joint stock company. However, it is not suitable for the creation of various rights and options attached to share classes or to form a more complex management system or levels.

12 Documentation

Is it customary in your jurisdiction to execute a form of non-binding agreement before the execution of a binding contract of sale? Will the courts in your jurisdiction enforce a non-binding agreement or will the courts confirm that a non-binding agreement is not a binding contract? Is it customary in your jurisdiction to negotiate and agree on a term sheet rather than a letter of intent? Is it customary to take the property off the market while the negotiation of a contract is ongoing?

Any undertaking or 'promise to sell' agreement concerning real estate must be executed in front of a notary public and triggers payment of notary fees and stamp duty. Due to such expense it is not preferable in Turkey to execute a pre-sale undertaking before the execution of a binding sale. Courts will not enforce any 'promise to sell' agreement or a letter of intent concerning sale of real estate unless executed in front of a notary public. Significant real estate development projects are often secured by execution of such an official undertaking before binding sale; however, for small projects or for non-commercial real estate sales it is customary to pay the owner a deposit to secure the purchase of the real estate and take the property off the market while negotiation is continuing.

13 Contract of sale

What are typical provisions in a contract of sale?

A sale contract may not include a condition for transfer of title, ie, may not provide for an automatic clawback of title in the case that a contractual condition is not met or a representation is breached. If the parties decide on a condition to close the sale of a real estate property, registration to title shall not be made until such condition is fulfilled. A specific contract type is worth mentioning, developed for purposes of financing a real estate development project, namely construction contract in return for land is a contract that combines two types of agreements, construction and development of the project by the developer against promise to sell by the owner of the land. This type of contract in brief creates an alternative for an owner of real estate to acquire constructed units without making any investment. The developer in return receives the real estate for free and acquires a predetermined share of the constructed units. This agreement must also be executed in front of a notary public since it inherently includes a sale undertaking by the owner of the real estate. Parties may register this agreement with the title deed registry office for protection against possible third-party interest holders.

Typically a sale contract includes a clause for payment terms, basic representation and warranties customary for this type of the project. A title search can be done at the same time since title records will also reflect any encumbrance existing thereupon. Title passes to the buyer as and when the contract is signed between the parties and registered by the title deed registry office, which occurs simultaneously. Therefore there is no gap between signing and closing removing requirements such as escrow, elaborate covenants and other risk-allocation provisions.

14 Environmental clean-up

Who takes responsibility for a future environmental clean-up? Are clauses regarding long-term environmental liability and indemnity that survive the term of a contract common? What are typical general covenants? What remedies do the seller and buyer have for breach?

When environmental clean-up is necessary the owner is responsible for performing the work. However, the owner may have recourse to

an ex-owner for damages arising due to such environmental clean-up if such work was assumed by the ex-owner contractually or any representation was given in this respect within the sale contract. Long-term environmental liability and indemnity provisions may be agreed upon by the parties and included in the official, registered sale contract.

The Code of Obligations introduced a new concept to Turkish law, 'responsibility for peril'. This rule requires that if a party incurs a loss due to the operation of an enterprise engaging in a substantially dangerous operation, the owner of that enterprise (ie, a factory) is jointly responsible for that peril together with the manager (ie, manager of a petrol station or a factory), if any. An enterprise is deemed to engage in a 'perilous operation' if the enterprise is likely to cause material or frequent damage (even if the required diligence is given) when one considers the nature of its operation and the vehicles or powers used in its activity. In light of this rule, if an enterprise which constitutes material danger causes environmental damage, the owner of that enterprise is jointly responsible for that danger together with the manager of such enterprise (eg, the manager of a petrol station being jointly responsible with the owner).

15 Lease covenants and representation

What are typical representations made by sellers of property regarding existing leases? What are typical covenants made by sellers of property concerning leases between contract date and closing date? Do they cover brokerage agreements and do they survive after property sale is completed? Are estoppel certificates from tenants customarily required as a condition to the obligation of the buyer to close under a contract of sale?

As a statutory right, a new owner of real estate may request eviction of an existing tenant occupying such real estate if the new owner proves personal or immediate family's needs to use the real estate for residence or as a workplace, irrespective of any default or breach of the lease agreement in place. Unless such condition is proved, the lease will automatically continue with the new owner. In this situation, the new owner shall send a notice to the tenant within one month starting from the date of purchase and file action for eviction within six months, also starting from the date of purchase of the real estate. If the buyer is willing to maintain the current lease then representation may be required from the seller regarding the legal status of the existing lease, such as no default, transfer of existing deposit amounts, no existence of rental income assignment to third parties, survival of the lease term, etc. As already mentioned, since in practice there is no gap between the signing and closing of a real estate transaction (due to the requirement that title passes as and when registration is made to the official title deed registry), representations such as no default under existing leases are made at the closing (registration) date and any breach will give rise to a potential claim to the buyer for compensation.

16 Leases and mortgages

Is a lease generally subordinate to a mortgage pursuant to the provisions of the lease? What are the legal consequences of a lease being superior in priority to a mortgage upon foreclosure? Do lenders typically require subordination and non-disturbance agreements?

A lease right is subordinate to a mortgage right. A lease is a personal right whereas a mortgage is a right in rem. However, a mortgage holder may not request eviction of a tenant until foreclosure is consummated, as with a mortgage holder becoming owner as a result of a forced sale. In this case, the explanation in question 15 will be applicable. In order to protect from risk of eviction, a tenant may register its lease agreement with the title deed registry office for a definite period upon consent of the owner. If the lease agreement is registered than neither a mortgagee nor a buyer may request eviction of the tenant for as long as the registration period, even if the new

owner needs to use the real estate for his or his immediate family's needs.

17 Delivery of security deposits

What steps are taken to ensure delivery of security deposits to a buyer? How common are security deposits under a lease? Do leases customarily have periodic rent resets?

It is very common to provide security deposits under a lease to the owner of real estate covering potential damages that may arise at the end of the lease period. This is a consequence of the statutory obligation of the tenant under Turkish law to use the real estate in good order and to vacate it in the same condition as it was when leased. It is also not permitted to demand a security deposit exceeding three times the lease amount.

18 Due diligence

What is the typical method of title searches and are they customary? How and to what extent may acquirers protect themselves against bad title? Does your jurisdiction provide statutory priority for recorded instruments?

Title searches are customary and can be conducted through the title deed registry office located where the real estate is situated. An encumbrance (eg, right of ownership) may only validly exist if it is registered with the title deed registry office. Therefore, the risk of bad title is confined to extremely rare situations where an owner's registration is subsequently found to be fraudulent. In this circumstance, as per Turkish law, a distinction is made between buyers in good faith (*bona fide*) and bad faith (*mala fide*). A *bona fide* purchase from a registered seller is protected by law even if the seller's title is later found to be invalid. However, if a buyer is aware or supposed to be aware of an irregular (fraudulent) registration then such buyer may not rely on the fact that the acquisition was made from a duly registered owner.

19 Structural and environmental reviews

Is it customary to arrange an engineering or an environmental review? What are the typical requirements of such reviews? Is it customary to get representations or an indemnity? Is environmental insurance available? Is it customary to obtain a zoning report or legal opinion?

An engineering or an environmental review is conducted depending on the nature of the real estate being acquired (ie, a factory or any other technical structure being erected on the real estate). Such review is usually conducted by a special consultant. It is also customary to include representation or an indemnity within the sale contract to cover adverse consequences. Environmental insurance is available covering potential environmental related damages. As part of the due diligence process, it is customary to visit the local municipality to obtain a zoning report and inquire into the permitted construction status and allocation purpose of the real estate before a sale is consummated.

20 Review of leases

Do lawyers usually review leases or are they reviewed on the business side? What are the lease issues you point out to your clients?

Leases usually have standard provisions and are mostly reviewed on the business side, unless they include complex or incorporate complex revenue-sharing mechanisms. Lawyers usually focus on annual rent increase provisions and eviction terms by also taking into account the statutory rights granted to a tenant. If the real estate is going to be used as an office, it is also important to check subleasing options since a sublease is subject to written approval of the owner.

21 Other agreements

What other agreements does a lawyer customarily review?

A lawyer customarily reviews title deeds and registry records for ownership, encumbrance status, zoning and construction permits issued by the municipalities and any service, management or real estate development contracts to the extent applicable.

22 Closing of transaction

How does a lawyer customarily prepare for a closing?

A lawyer makes sure that the agreement is duly finalised, parties or duly appointed proxies are present on the date of registration, a closing date is set with title deed registry office and the closing (transfer of title) is duly registered with public records. If financing is involved, then registration of the mortgage will also need to be completed on or subsequently after the transfer of title. If parties are acting via proxy, power of attorney needs to be checked in order to ensure that they contain the required references.

FINANCING

23 Form of lien

What is the method of creating and perfecting liens?

A right of mortgage can be established on each separate parcel of real estate. Mortgage can be validly created by submission of a written mortgage agreement in Turkish signed by the owner of the land and the mortgagee to the title deed registry office. A mortgage contract to be established on real estate must be registered in the relevant land registry office to become valid and effective. Perfection will be achieved by such registration process. On the other hand, any lien on a moveable asset (including share certificates of a company) can be established in the form of a pledge. Creation of a right of pledge requires a written pledge agreement and as for perfection, physical delivery (or actual control) of the secured moveable asset must be passed upon a pledgee. The only exception to the physical delivery of each pledged moveable asset is in the case of a commercial enterprise pledge. In this case, the enterprise as a whole remains with the pledgor and the pledgor continues to run its workplace.

24 Legal requirements

What would be the ramifications of a lender from another jurisdiction making a loan secured by collateral in your jurisdiction? What is the form of lien documents in your jurisdiction? What other issues would you note for your clients?

A foreign lender does not need to be qualified in Turkey to provide financing to a Turkish company. Any loan provided by a foreign bank or a financial institution is exempted from withholding tax, stamp tax and VAT in Turkey. Normally registration of a mortgage will require payment of a registration fee of 0.396 per cent and stamp tax of 0.825 per cent of the mortgage amount. However, in the case of a foreign lender providing financing, such registration fee is waived. If a foreign lender benefiting from a right of mortgage transfers its loan (thus the mortgage right) to another foreign financial institution, a registration fee waiver will be applicable to such new foreign lender as well. The result would be different if the loan were transferred to a local party where payment of the previously waived fees would be required. Another advantage applicable to a financial institution is the ability to obtain a mortgage in foreign currency as opposed to a non-financial institution. This option is to secure foreign currency loans, but the only condition is that the mortgagee must be a bank or other financial institution.

25 Loan interest rates

How are interest rates on commercial and high-value property loans commonly set (with reference to LIBOR, central bank rates, etc)? What rate of interest is unreasonably high in your jurisdiction and what are the consequences if a loan exceeds the reasonable rate?

Usually interest rates are set with reference to LIBOR or Euribor plus a margin. There is no set ceiling with respect to a maximum permitted interest rate. Lenders and borrowers are free to determine the applicable interest rate. The only exception is that a compound interest charge is prohibited except in the case of running a revolving current account. However, in very exceptional circumstances, courts have in the past applied a revision to the applicable contractual interest rate if and when it is found to be substantially disproportionate to prevailing rates in the market, also considering whether the borrower is a real or legal person with an ability to comprehend or negotiate the loan terms.

26 Default and enforcement

How are remedies against a debtor in default enforced in your jurisdiction? Is one action sufficient to realise all types of collateral? What is the time frame for foreclosure and in what circumstances can a lender bring a foreclosure proceeding? Are there restrictions on the types of legal actions that may be brought by lenders?

Foreclosure actions are divided into two categories, namely for foreclosure of moveable and immovable assets. The rule of law is that a judicial foreclosure procedure is followed in order to take enforcement actions against a defaulting debtor. In the case of foreclosure of a right of pledge on a moveable asset, out of court (private) sale right may be agreed upon by the parties. Such private auction remedy is not permitted in the case of foreclosure of a real estate mortgage. A lender may bring a foreclosure proceeding after formally putting a borrower into default. Usually for such action, serving an official default notice through a notary public may be required. Each collateral must be separately pursued and separate foreclosure actions will need to be initiated for each mortgage or pledge agreement, even if the lender and the borrower are identical in each case. An exception to this rule would be grant of a joint mortgage where more than one real estate would be captured under a single agreement to secure a lender's claim. There is also a principle under Turkish law known as 'obligation to primarily pursue the pledge', which means that if a receivable is secured by a pledge, the lender first has to pursue the pledge before enjoying any other guaranty or surety. There are exceptions to this rule. A lender may initiate proceedings against a debtor without first having to resort to pledge if:

- the amount of such pledge is insufficient to repay the receivable;
- a receivable is based on a check, policy or promissory note;
- the pledge is created in order to secure the interest and annual instalment receivables;
- the debtor objects to the pledge right on the moveable property;
- a third party has given surety for the receivable secured by the pledge; or
- it is reasonably foreseen that the sale proceeds will not be able to repay the receivable amount.

27 Protection of collateral

What actions can a lender take to protect its collateral until it has possession of the property?

In the case of right of pledge, the secured moveable asset will be in the hands or under the control of the pledgee. In the case of a mortgage, if an owner acts in a manner that will harm the real estate, a secured creditor may request prohibition of such actions from the court. If there is a case requiring urgent action, a secured creditor may proceed

to take necessary precautions immediately and without permission from the court. If damage has already occurred at the real estate due to failure or negligence of the owner, a secured creditor may request additional guarantee from the owner or reinstatement of original status. If the value of the real estate decreases substantially without fault or negligence of the owner, a secured creditor may request an additional guarantee or reinstatement only if the owner has actually received compensation due to such damage, such as collection of insurance proceeds.

28 Recourse

May security documents provide for recourse to all of the assets of the borrower? Is recourse typically limited to the collateral and does that have significance in a bankruptcy filing? Is personal recourse to guarantors limited to actions such as bankruptcy filing, sale of the mortgaged property or additional financing encumbering the mortgaged property or ownership interests in the borrower?

A blanket lien is not permitted under Turkish law. Both the extent or amount (ie, the maximum security amount) and the coverage (the secured assets) must be clearly delineated in order to create a valid security right. An undertaking of a borrower to provide security over all existing and future assets will be unenforceable. Recourse is limited to the collateral and the holder of such collateral is entitled to foreclosure irrespective of the initiation of a bankruptcy proceeding against the same debtor. Any amount still due after collection of the foreclosure proceeds will be added to the bankruptcy estate claims.

29 Cash management systems

Is it typical to require a cash management system and do lenders typically take reserves?

It is not typical to require a cash management system or request a debt reserve account except in project financing matters where the cash generated by the project financed is allocated to the repayment of the loan.

30 Credit enhancements

What other types of credit enhancements are common? What about forms of guarantee?

Credit insurance in the case of securitisation type of financing, letters of credit or provision of a form of a negotiable instrument in the case of trade finance, escrow accounts in the case of asset finance and personal or corporate guarantees in the case of working capital finance is customary. Guarantees can be given in the form of surety or in the form of independent payment guarantee.

31 Loan covenants

What covenants are commonly required by the lender in loan documents? What is the difference depending on asset classes?

Negative and affirmative covenants are commonly used, especially when the lender is a foreign financial institution with a loan document that is consistent with London Market Association standards. The most common types of negative covenant are 'no merger', 'restriction on disposal of assets', 'restriction on encumbrance', 'arm's-length transactions' and 'no other default', whereas 'continuous of business', 'compliance with laws' and 'permits and authorisations' are common types of affirmative covenant.

32 Financial covenants

What are typical financial covenants required by lenders?

Financial covenants are also often seen in loan agreements. The most common types are 'minimum net worth', 'loan-to-value', 'debt to equity' and 'debt service coverage' ratios. Financial reporting is also

often required. Ongoing appraisals on security value often take place in the event of a default or potential event of default as opposed to periodically. Appraisals are more frequent if the financing is secured by the same real estate for which the loan has been provided for.

33 Bankruptcy

Briefly describe the bankruptcy system in your jurisdiction.

Pursuant to Turkish law, only a merchant or those who are subject to provisions of merchants or persons who are specifically stated in the legislation may be subject to bankruptcy. In order to initiate general bankruptcy proceeding against a debtor, a creditor must request the execution office to deliver a payment order to the debtor stating that if the amounts due to the creditor from such debtor are not paid within seven days after service of payment order, then the creditor will initiate bankruptcy proceedings against the debtor. If the amount due to the creditor has not been paid during a period up to one year following service of such payment order the creditor may apply to the commercial court to initiate general bankruptcy proceedings against the debtor. (There are certain exceptions under which a creditor may directly ask the court for bankruptcy of a debtor without having to first serve a payment order.) If the debtor has not objected to the payment order, a petition filed pursuant to the Civil Procedure Law will be sufficient for such application. If the debtor has filed an objection to the payment order, the creditor again through a petition filed with the execution office may request the commercial court to waive these objections and initiate bankruptcy proceedings against the debtor. The commercial court will then review this request and the objections to the payment order. If the commercial court rejects the debtor's objections, the commercial court will issue an order to remit the same amount stated in the payment order to the cashier of the commercial court within seven days. If the debtor does not comply with this order, then at a subsequent hearing, which must be held within seven days after this second payment order, the commercial court must declare the debtor as bankrupt. Any bankruptcy order of the commercial court may be appealed by the debtor. Upon the initiation of bankruptcy proceedings against the

debtor, the commercial court will immediately notify the bankruptcy office. All assets of the debtor will be collected in one bankruptcy estate by the bankruptcy officer. Any and all assets and receivables of the bankrupt debtor entity, including assets that have been seized by creditors of the bankrupt debtor but not yet sold and assets and rights that are inherited by the bankrupt debtor shall be included in the bankruptcy estate. After the debtor has been declared bankrupt by the commercial court, no execution proceedings can continue against the bankrupt debtor during the liquidation of the bankruptcy estate. An option for a debtor is that it may request its own bankruptcy from a commercial court without waiting for a request from a creditor. Irrespective of the bankruptcy, secured creditors may proceed with the foreclosure of the secured assets having a right to exclusively enjoy the sale proceeds thereof.

34 Secured assets

What are the requirements for creation and perfection of a security interest in non-real property assets? Is a 'control' agreement necessary to perfect a security interest and, if so, what is required?

For a pledge over moveable assets, the requirement is the existence of a written pledge agreement plus physical delivery of the secured asset or if physical delivery is not feasible, the delivery of the actual control (eg, keys to a warehouse where the inventory is located).

35 Single purpose entity (SPE)

Do lenders require that each borrower be an SPE? What are the requirements to create and maintain an SPE? Is there a concept of an independent director of SPEs and, if so, what is the purpose? If the independent director is in place to prevent a bankruptcy filing, has the concept been upheld?

Lenders do not usually require borrowers to establish an SPE except in certain securitisation deals where certain assets of a borrower may be required to be segregated from the borrower's general asset pool. Other than in this limited case, SPEs are not favoured by the practice or statutory regime, especially tax legislation.



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