



ISSUES RELATING TO FINANCE

TURKEY Pekin & Pekin

CONTACT INFORMATION

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1. **What instruments are used to create a lien on real estate to secure an indebtedness (e.g., a mortgage or deed of trust)?**

Under Turkish law and according to Article 881 of the Turkish Civil Code (Law No. 4721), a mortgage can be created as security for any kind of debt, present, future or contingent, by registering a mortgage over a real property with the records of the relevant Title Deed Registrar where the real property subject to mortgage is registered. The perfection of a mortgage requires a mortgage agreement to be entered into between the mortgagor and mortgagee at the Title Deed Register and thereafter, registration of the mortgage with the same.

2. **Describe [national] [state] [territorial] [provincial] or local mortgage recording or other similar taxes payable on making a loan secured by real estate or perfecting a lien on real property.**

Upon the execution of the mortgage agreement by and between the mortgagor and the mortgagee before the Title Deed Registrar, 0,7½% of the mortgage amount shall be paid as stamp tax and 0,36% of the mortgage amount shall be paid as Title Deed Charge. According to last paragraph of Article 851 of the Turkish Civil Code, while calculating the Turkish Lira equivalent of the mortgage amount in foreign currency, foreign currency purchase rates of the Turkish Central Bank effective on the date of such calculation shall be applied.

However registration of a mortgage in favour of Banks and Financial institutions (Regulated) is exempted from stamp tax and Title Deed Charge.

The procedures for the registration of a mortgage in favor of a foreign company are as follows:

- (a) Application to Local Title Deed Registrar together with the following documents:
 - (i) Notarised and apostilled copy of the Certificate of Activity of the foreign company;
 - (ii) Notarised and apostilled copy of the Articles of Association of the foreign company;
 - (iii) A notarised and apostilled power of attorney enabling the proxies to proceed with the legal procedures for and on behalf of the foreign company.
- (b) Execution of the Mortgage Agreement at the Local Title Deed Registrar;
- (c) Registration of the Mortgage with the records of the relevant Title Deed Registrar.

3. Describe manner in which a lien secured by real property is foreclosed.

Under Turkish law, the Mortgagee is required to initiate the following judicial foreclosure proceedings in order to cash-in the Mortgage:

- (a) The Mortgagee will apply to the relevant Execution Office for calling the Mortgage and to cash-in the same;
- (b) The Execution Office will serve a payment order to the Mortgagor and require the Mortgagor to pay the amount of the debt, together with default interest and legal charges thereon, within 15 days from the date of receipt of the payment order or to object to the contents of the payment order within 7 days from the date of receipt of the payment order;
- (c) In the event no objection is made by the Mortgagor within 7 days and the debt, together with the default interest and legal charges thereon is not paid within 30 days, the Execution Office will appoint experts to evaluate the market value of the Property. In the event the contents of the payment order are objected to by the Mortgagor, the Mortgagee is required to file a lawsuit against the Mortgagor and claim an annulment of the objection from the courts. In the event the Mortgagee's claim is awarded by the courts, the Execution Office will be able to appoint experts to evaluate the market value of the Property. The judgement of the courts is appealable by the Mortgagor in the event the award is in favour of the Mortgagee, however, the proceedings at the Court of Appeal shall not suspend those of the Execution Office but it will suspend the sale of the Property at a public auction. In other words, the

Property can be sold at a public auction after the judgement of the court is approved by the Court of Appeal;

- (d) The Execution Office, after receiving the experts report evaluating the market value of the Property, will serve it to the Mortgagor who will then have the right to object to the evaluation report within 7 days before the relevant court, and the court will determine the market value of the Property through experts to be appointed by the judge. The judgement of the court for determining the market value of the Property is also appealable and an appeal will suspend the sale of the Property at public auction;
- (e) After completion of all the above mentioned foreclosure proceedings, the Execution Office will decide upon the dates of public auction for the sale of the Property subject to mortgage, which will be two separate auction dates. In the first auction, at least 60% of the market value as determined by the experts is required to be offered and if such an offer is not provided, at least 40% of the market value is required to be offered in the second auction. In the event sufficient offers are obtained by the Execution Office, the Property 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 from such proceeds. The costs of the foreclosure proceedings and the legal costs made during that term shall be paid from the sale proceeds and the outstanding amount shall be paid to the Mortgagee. The legal costs includes lawyer's fees payable in accordance with the most recent tariff in force as published in the Official Gazette of the Republic of Turkiye;
- (f) The Mortgagee has the right to bid and purchase the property subject to mortgage. In such case the Mortgagee has the right to off-set its receivables from the bidding price. If the receivables of the Mortgagee is equal to or more than 20% of the market value of the property, then the Mortgagee shall not pay the deposit money/letter of guarantee of 20% of the market value of the Property that the other third party bidders are required to pay before entering into the bid. In case the bidder purchases the Property at the end of the foreclosure proceedings it will be free to sell the same to the third parties;

If the receivables obtained from the foreclosure proceedings do not cover the whole amount of the Mortgagee's receivables, an open pledge certificate is given to the Mortgagee. Thus, the Mortgagee may commence execution proceedings or bankruptcy proceedings on the other assets of the Mortgagor depending on such certificate.

4. Describe any significant costs of or impediments to foreclosing a lien on real property.

Costs of involved in foreclosing a real property may be offset from the receivables obtained from the foreclosure proceedings.

5. What is the customary time period for foreclosing a lien on real property?

The above mentioned foreclosure proceedings will take approximately 6-7 months, in the case of no objections from the Mortgagor and 2 years or so, in the case of objections or appeals at each step.

6. Are there [national] [state] [territorial] [provincial] or other local governmental permissions, approvals or licenses required for foreign banks or other foreign lenders to make real estate loans secured by real property? If so, please describe.

Please note that that Foreign Banks or Lenders are not permitted to provide consumer loans in Turkiye. In this regards housing loans may not be provided to Turkish customers. However Turkish citizens may freely obtain commercial loans from foreign banks or other foreign lenders and such lenders and are free to secure such loan by creating a mortgage over a real property owned by the borrower or even third party.

7. What legal limits are imposed on the amount of interest which may be charged on a loan secured by real property?

There is no limit imposed by respective Turkish legislation on the amount of interest which may be charged on a loan secured by real property. However please note that in principal, the amount of the mortgage is required to be registered in Turkish Lira (Article 851/I of the Turkish Civil Code), however, according to Article 851/II of the Turkish Civil Code, in the event the mortgage is to be registered as a security for a foreign currency cash loan to be obtained by a borrower resident in the Republic of Turkiye from a credit institution conducting business within the Republic of Turkiye or abroad, the amount of the mortgage can be registered in foreign currency, which should be the same currency as the loan.

According to Article 851/I of the Turkish Civil Code, a mortgage securing an existing or future debt, the amount of which is indefinite, can be registered as a maximum amount mortgage, and in such case, the amount of the mortgage should be agreed upon by the mortgagor and mortgagee and written in the mortgage agreement.

8. Describe any laws that restrict the ability to make a borrower or guarantor personally liable for indebtedness secured by real property.

N/A