



ISSUES RELATING TO COMMERCIAL LEASING

TURKEY Pekin & Pekin

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1. Describe [National][state][territorial][provincial] or local transfer taxes payable on creation or assignment of a lease.

Stamp tax is payable on creation or assignment of a written lease agreement. The stamp tax ratio is 0.15 % of the annual rent.

2. Describe any legal restrictions limiting the maximum term of a lease (including renewals).

There are no legal restrictions limiting the maximum term of a private real property lease (including renewals). However, according to the Public Procurement Law (Law No. 2886) lease of state owned real properties (other than tourism facilities) may only be tendered for a maximum period of 10 years.

3. Describe any laws requiring landlords to allow a tenant to renew its lease.

As per the Law on the Real Property Leases (Law No. 6570), which is applicable to the real properties located within municipality borders, if the tenant does not notify the landlord in writing that he/she wishes to terminate the lease agreement 15 days prior to the expiry date of the lease agreement, the lease agreement shall be deemed to be extended automatically for one more year with the same conditions.

4. Describe any restrictions on rent that may be charged for to a tenant.

The rent amount and what may be included in the rent (electricity, taxes, cost etc.) may freely be determined between the landlord and tenant. However the agreement between the landlord and tenant shall not bind the third parties such as tax authority.

5. Describe any laws permitting tenants to terminate a lease prior to its stated expiration date.

In case of early termination by tenants, (In practice and in accordance to the supreme court decisions) tenants continue to pay the rent until the property is re-leased to a different tenant or for a reasonable period that the property could be re-leased. This reasonable period may be determined by a court decision. In addition, as per the Article 264 of the Code Of Obligations (Law No. 818) tenants are allowed to terminate a lease agreement by paying a reasonable compensation to the landlord and by claiming that the exercise of such agreement is unsustainable. In case that the lease agreement term is more than one year, the compensation to be paid to landlord or tenant cannot be less than 6 (six) month's rent. Unless otherwise stated in the agreement, termination of the lease agreement is not legally stated in the provisions excluding exceptional cases. These reasons must oblige tenants to terminate the lease agreement such as devaluation, moving to another city, cancellation of the business etc.

6. Describe any laws allowing tenants to assign or sublease without landlord's consent.

As per the Law on the Real Property Leases (Law No. 6570), the real properties such as hotel, boarding house, dormitory etc., which has to be leased in accordance with the objective of the property might be assigned or subleased by tenants without landlord's consent provided that the whole real property is not leased.

7. Describe any laws allowing landlord to restrict assignments or subleases by tenants.

As per the Law on the Real Property Leases (Law No. 6570), other than the exception mentioned above, tenants are not allowed wholly or partly to assign or sublease the real property unless otherwise stated in the lease agreement.

8. What is the common form of eviction proceeding? What is the customary length of time for that proceeding?

Under Turkish Law, Landlords may not terminate the lease agreement and evict the tenant without relying to a legitimate cause specified by Law. The main causes for eviction specified in Law on the Real Property Leases (Law No. 6570) such as: land landlord or its family is in need of the premises as a residence or a work, in requirement of significant reparation, failure to pay rent (If a landlord has issued within a one-year period two justified warnings to the tenant for failure to pay rent), breach of the terms of the lease, etc.

In occurrence of one of the above causes, landlords may file an "action for eviction" at magistrate court (which is the most common form of eviction proceeding) at the end of lease period.

In the event that the landlord holds a written promise to vacate signed by the tenant the landlord may directly apply to the execution office for the eviction of the real property rather

than filing a law suit at magistrate court. If there is no promise to vacate signed by the tenant, the customary length of time for that proceeding is between 6 months to 1 year excluding appeal process.

9. Are there any legal restrictions on pledging a leasehold interest as security for a financing?

No. Unless otherwise stated in the lease agreement assignment of lease receivables are not restricted and consent of the tenant is not required, general “pledge on receivable” provisions of Turkish Civil Code (Law. No 4721) shall apply.

10. Describe any requirements for landlords to hold security deposits in separate accounts and, if such requirements exist, describe if there can be one separate account for all tenant security deposits or whether each security deposit must be held in its own separate security deposit.

There is no such requirement.

11. Describe any required statutory or other legal disclosures to be made to all tenants.

According to Article 249 of the Code Of Obligations (Law. No 818), in occurrence of some defects on the real property, such defects needs to be disclosed by landlord prior to the signing of the lease agreement.

12. Describe all taxes on rent or other taxes that landlord are required to collect from tenants.

Withholding tax is deducted from the annual rent amount of real properties leased as a workplace whose owners are real person. 20 % of rent amount is deducted as a withholding tax and paid by tenant. If the rent amount is stated “net amount” in the lease agreement, withholding tax amount must be additionally paid. The real properties used as a residence are exempt from withholding tax. In case that the real property is owned by a corporation, Value Added Tax (“VAT”) is paid in the proportion of 18% by tenant. The corporation Landlords will also pay 20% corporate tax over rent amount. If the real property is leased for residential purposes than from a real person landlord then there will be no withholding and the real person landlord shall pay income tax an a rate which is variable in relation to his/hers over all income. However, there are some exemptions regarding the income tax. The rent amounts less than TL 2.600 for residences and TL 4.300 for workplaces which are within the municipality borders and TL 3000 out of municipality borders are exempt from income tax.

13. Describe any limitations on the ability of landlords to exercise self-help.

Exercise of self help by landlords without involvement of a court or execution office would be considered as an offense under Turkish Criminal Code (Law No. 5237).

14. Describe whether remedies such as acceleration of rent must be expressly stated or whether they are implied.

Such remedies must be expressly stated in a lease agreement.

15. Describe whether there are any expedited remedies for tenant default and, if so, what lease provisions (such as waiver of jury trial, for example) would be required for a landlord to seek expedited remedies.

Under Law on the Real Property Leases (Law No. 6570) tenants are highly protected and in practice provisions on expedited remedies are considered as null by supreme court decisions.

16. Describe any formal requirements for the execution of a lease.

There is no formal requirement for the execution of a property lease agreement. Verbal lease agreements are also valid.

17. Describe whether a memorandum of lease or other document would need to be recorded for the lease to be enforceable against third parties.

For the lease to be enforceable against bona fide third parties, an annotation should be recorded at the land registry directorate where the lease property is registered.

18. Describe any restrictions on the transfer of ownership of real properties subject to a lease. Does such a transfer affect the tenant's rights or obligations?

There is no restriction on transfer of ownership of a real property which is subject to lease. According to the Law on the Real Property Leases (Law No. 6570) article 7-d, in case that the ownership of real property which is subject to a lease agreement is transferred to a third party, the new landlord may terminate the lease agreement with a 6 months prior notice to be served to the tenant 1 month following the date of transfer provided that he needs the premises as a residence either for himself or for his wife and children and/or for a place of business. If the new landlord fails to serve the notice within a month after the transfer of the property and/or in absence of causes for eviction specified in Law on the Real Property Leases (Law No. 6570) article 7-d he shall be bound by the terms of lease agreement.