TURKEY

Turkey attracts investors from across the globe, with overseas investors concentrating their activity towards Istanbul. Turkey has a large and dynamic market, with a relatively high quality labour force and economic location advantages, with easy access to regional markets.

The real estate market is comparatively small, but growing and has doubled in size since 2006. As a result investment activity remains relatively low; this is reflected in lower levels of liquidity.

Legislation to create REITs came into effect in 1995. There are currently 29 REITs trading on the Istanbul Stock Exchange. Their market share has been relatively low in recent years.

The retail sector has been the biggest capital recipient due to the relatively high growth potential of this sector and availability of investment grade property. The office sector is also being successfully targeted by investors, with more modern stock being developed and let to a growing number of tenants. There is lack of quality in the industrial property sector and demand is mostly driven by local companies.

Commercial and saving banks grant loans of varying maturities, underwrite, issue, and trade in securities for customers. They account for the largest portion of the business volume and are active in most types of banking operations. Besides, development and investment banks serve to finance the big investments and infrastructure constructions.

In order to catch its potential Turkey has to build confidence in its economy by ensuring transparency, political and regulatory stability.

Market sizing

	Turkey	*Europe*
Invested stock* (Total stock)	EUR 25bn (EUR 420bn)	*EUR 3,380bn (EUR 8,150bn)*
Liquidity ratio* (10y average)	0.3% (2.5%)	*4.0% (4.5%)*
2013 volumes (10y average)	EUR 0.1bn (EUR 0.4bn)	*EUR 139bn (EUR 135bn)*

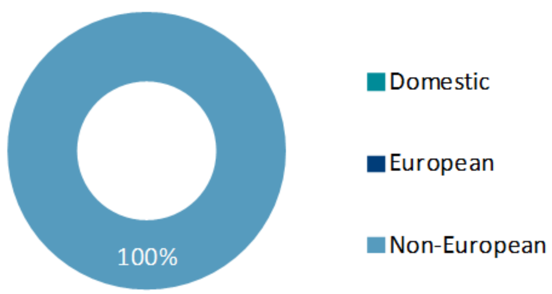
** 2012 figures*

Market pricing – Istanbul (Q4 2013)

	Office	Retail	Industrial
Current Yield	7.00%	6.25%	8.50%
Min/Max (10y)	7.00-10.00%	6.25-12.00%	8.50-12.00%
Yield definition	Net initial yield		

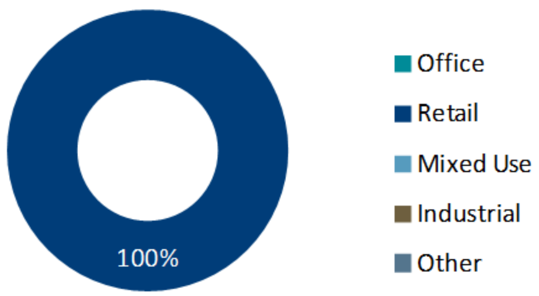
Source : DTZ Research

Investment activity by source of capital, 2013



Source : DTZ Research

Investment activity by asset type, 2013



Source : DTZ Research

PROPERTY LAW

TYPES OF OWNERSHIP

Ownership

- Turkish Civil Code defines ownership as the broadest in rem right which enables the owner to use, receive the benefits of, and dispose of a property, subject only to the law.
- The owner has the right to reclaim it from anyone withholding it from him or her and to protect it against any unwarranted interference.
- Any title, transfer or charge on the ownership right must be registered on the local land registry *(tapu sicili)*

Joint Ownership

- Defined by Law
- Joint ownership exists where several persons own a share on a property which is physically undivided.
- Unless otherwise stipulated, they are co-owners in equal measure.
- Each joint owner has the rights and obligations of ownership in respect of his or her share on the property/immovable, and said share may be alienated and pledged by him or her, or distained by his or her creditors.

Co-ownership

- Defined by Law
- Co-ownership exists where none of the co-owners can dispose of his share without the consent of the others and none of them holds a separate part of the property.

RIGHTS AFFECTING OWNERSHIP

➔ Easement Right

- Is an in rem right where a parcel of land is encumbered in favour of another property such that the owner must permit the owner of the dominant property to exercise certain rights over it to or may not exercise certain of the rights attaching to his or her property for the benefit of the owner of the dominant property.
- An easement right is created by entry in the land registry.

➔ Mortgage

- A mortgage may be created to secure any kind of debt, be it current or future (either definete or possible).
- The mortgaged property does not need to be owned by the debtor.
- Mortgages can be created for an amount debt described in Turkish Lira or the Turkish Lira equivalent of a debt in foreign currency.
- A mortgage is created in a specific rank, even if the secured amount is indefinite or variable, and it retains such rank notwithstanding any fluctuations in the secured amount.
- Unlike many countries in Europe, the beneficiary of the mortgage on a property/immovable cannot automatically possess the ownership of the mortgaged immovable (lex commissaria) in case of the nonfulfillment of the debt, but the mortgage beneficiary must in any case put the immovable on sale, via Execution Office, in order to collect his/her receivables.

➔ Pre-emption right

- The joint owners of a property may exercise their pre-emption right in the event of a sale of a portion of the jointly owned property by any of the joint owners.

ACQUISITION PROCESS: KEY STAGES

In case a foreign investor holds more than %50 of the shares of a company established in Turkey or has the right to appoint or dismiss the people having the management authority in the same company, such company can acquire the ownership of an immovable/real estate only by applying to the relevant Provincial Planning and Coordination Directorate under the Governorship of the relevant city, to obtain permission for the acquisition.

➔ Land Registry Deed and Deed of Sale

- Land registry deed is a document showing that a real person(s) and/or legal person(s) own a specific immovable, an in rem right or a right in personam on an immovable. In case there is a discrepancy between the land registry deed and the official records of the Land Registry Office, the records of the Land Registry Office will prevail. In case an ownership of a property/immovable or another in rem right or a right in personam is transferred to others, such transfer can only be deemed as valid provided that the transfer is executed before the land registrar in the Land Registry Office. The official Deed of Sale is kept by the relevant Land Registry Office.

➔ Promise to Sale Agreement

- The buyer and the seller of a property/immovable may execute a promise to sale agreement to set forth the conditions of the sale and where the buyer can be forced to sell and the seller can be forced to buy the property in line with the conditions set forth in the promise to sale agreement.
- The promise to sale agreement is only valid, if it is either executed before the Turkish notary public or before the land registrar. In case the promise to sale agreement is executed before the Notary Public, it is advisable to annotate the promise to sale agreement with the relevant land registry records.

COMMERCIAL LEASES

Lease of a property is covered in the relevant provisions of the Turkish Code of Obligations.

Certain provisions of the lease agreements may be freely agreed by the parties, including but not limited to the below;

- the initial rental
- the duration of the lease
- sub-lease restrictions on the lease property

However, lease agreements must comply with some mandatory rules including, but not limited to the below;

- in fixed term business place lease agreements, unless the tenant notifies in writing that he will evacuate the leased area at the latest fifteen days prior to the termination of the lease agreement, the lease agreement will be renewed for a term of one year with the same conditions.

- any clause in a lease agreement which is against the benefit of the tenant other than determination of the lease amount is deemed invalid. However this rule will come in force in July 1st, 2020.

-a clause which imposes the tenant to increase the rental in foreign currency annually is prohibited, thus the landlord may only increase the annual rentals only after the expiration of the 5th year of the lease term. However this rule will also come in force in July 1st, 2020.

- In case the parties agree, the lease agreement can be annotated to the relevant land registry and thus the terms and conditions of the lease agreement continues even if the owner of the leased property is changed.
- The new owner of a property, in case there exists a tenant in the property, may force the tenant to evacuate the property by informing the tenant in one month commencing from the acquisition date and must file a lawsuit for evacuation in six months' time, provided that he is able to prove that he or his close relatives (the persons are numerous clauses as stated in the law) need the property.

TAX

➔ Direct acquisition of a property

- The acquisition of a property gives rise to real estate transfer tax (RETT-tapu harcı), stamp duty, notary fee and value added tax (VAT).
- Real estate acquisitions in Turkey are subject to RETT, a charge of 4 per cent (2 per cent for the transferee and 2 per cent for the transferor) would be applied either on the purchase price of the real estate or on the official value of the real estate for real estate tax purposes. Whichever is higher, higher amount would be taken into account in the determination of the RETT base. Despite 2 per cent RETT liability of the transferor imposed by law, in practice, 2 per cent tax liability of the transferor would be borne by the transferee in addition to his RETT liability of 2 per cent. Hence, 4% RETT related to the acquisition of the real estate would be paid by the transferee.
- Stamp duty of 0,948% would arise when a promise to sale agreement is signed between the potential buyer and the seller in relation to the acquisition of real estates over the amount stated in the contract. If the parties have not considered signing a contract before the notary public, stamp duty and notary fees would not arise. Also, contracts that are not including any monetary amount are not subject to stamp duty of 0,948%.
- Real estate transactions taken place within the context of commercial activities (i.e. sales of real estate owned by companies) in Turkey are subject to VAT. The sales of real estates owned by non-commercial individuals are not subject to VAT. i.e. real estate transaction between individuals, are not subject to VAT.
- In certain circumstances, VAT exemption would be applied for the acquisition of the real estate from companies. If the holding period of a real estate in the balance sheets of companies is at least two years, the sale of such real estate is exempt from VAT. Companies who are engaging in business of real estate trading cannot benefit from such VAT exemption for such trading assets.
- Current VAT rates applied on real estate transaction are as follows;

  a) The sale of flat, house or residence owned by companies, which have usable space with less than 150 m2 or equal to 150 m2, is subject to VAT of 1%

  b) The sale of flat, house or residence owned by companies, which have usable space with more than 150 m2, is subject to VAT of 18%

  c) The sale of office premises owned by companies are subject to VAT of 18%, regardless of its usable space size.

  d) The sale of land owned by companies is subject to VAT of 18% regardless of its size.

➔ Acquisition of shares in a company holding a property

- Acquisition of shares of the company holding real estates would not trigger RETT of 4%. The term of real estate company has not been defined in Turkish legislation.
- Share purchase agreements are subject to stamp duty of 0,948% over the amount stated in the agreement. Share transfer agreements of limited liability companies would need to be made before the notary public, so that the notary public fees of 0,113% per signature (not exceeding 25,874.70 TL) would be paid over the amount of the share price.
- Share transfers made by a company via share certificates or temporary share certificates (ilmuhaber) are exempt from VAT. Share transfers of an individual are not subject to VAT. Another VAT exemption in relation to the real estate transactions is that; the acquisition of participation interest (shares that is not represented by share certificates or temporary share certificates) of any company, is exempt from VAT as long as its holding period of time in the balance sheet of the company would be at least two years. Companies that are engaging in business of participation interest trading cannot benefit from such VAT exemption, for such trading assets. The sale of participation interest held less than two years are subject to 18% VAT.

➔ Asset deal vs. share deal

- Acquisition of the shares is more favourable than direct acquisition of real estates in terms of tax savings. However share deal would cause the transfer of any business liability of the company to the acquirer. Therefore detailed due diligence study would be required to avoid undertaking undisclosed liabilities of the target company which may or may not be related to the immovable.