

## A New Phase for Lease Contracts of Business Premises in Turkey

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### Introduction

Since its entry into force on 1 July 2012, Turkish Code of Obligations (Law No. 6098) (“TCO”) has been serving as the main piece of legislation that sets a framework for lease contracts. The law contains many mandatory provisions, most of which are to provide protection for the tenant who is presumed to have a lesser socioeconomic power than that of the landlord.

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As far as the residential use is concerned, the rationale of tenant protection seems plausible, because it has certain degree of relevance with individuals’ right to housing and shelter protected under constitution. When it comes to business use, however, it can be well argued that commercial tenants should not necessarily be protected as much as residential tenants since the purpose of the arrangement is to provide space so that the business can generate profit through selling goods or services.

Nonetheless, the law provides no solid distinction between residential and business use in terms of tenant protection. This one-size-fits-all approach led to intense criticism by doctrine and certain interest groups during the lawmaking process. Instead of separating commercial use out of residential use in the law provisions, the legislature resorted to setting a transition period of 8 years, during which nine provisions of TCO remain inapplicable to lease contracts of business premises.

As the transition period comes to a close on 1 July 2020, it is time to recall the legal implications of the concerning TCO provisions on lease contracts of business premises.

### **Assignment of Contract**

TCO brings about a novelty regarding the assignment of lease contracts, giving the tenant of business premises the right to assign the contract to third persons regardless of the will of the landlord. To assign the lease contract, the tenant needs to notify the landlord and obtain his written consent. However, the landlord cannot refuse to give his consent unless he has a justified reason.

Once the lease contract is assigned, the assignee replaces the tenant but the assignor remains severally liable along with the assignee for the debts towards the landlord for a maximum duration of 2 years.

### **Early Termination**

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Unlike the preceding law, TCO particularly governs the early termination of lease contract by the tenant. According to the concerning provision, in case the tenant returns the property to the landlord prior to the expiry date or without observing the termination periods, his debts arising from the contract continues to accrue for a reasonable period in which the premises may be leased under similar conditions. The definition of reasonableness is subject to judicial interpretation.

However, the law also provides for an opportunity to get relief from the consequences of the early termination. Accordingly, if the tenant finds a new tenant who is ready to take over the premises, capable of paying the rent and whom the acceptance of the landlord is reasonably expected, debts of the tenant that may accrue during the reasonable period shall expire.

Besides, the landlord is liable to deduct from the rent the monetary equivalent of benefits he gained or deliberately avoided gaining during the reasonable period.

## Security Deposit

TCO sets a maximum limit on the security deposit that may be requested by the landlord in connection with the lease agreement. Pursuant to the law, the security deposit cannot exceed the amount equivalent to three months' rent. However, security deposit does not necessarily have to be paid in the form of money. It can be anything that has a monetary value, including negotiable instruments, gold, commodity, bank guarantee etc.

If money is given as a security deposit, the landlord has to deposit it into a savings account at a bank and it cannot be withdrawn without mutual consent, unless there is a finalized court decision or enforcement proceedings resulted in favor of a contracting party.

Following the termination of the lease contract, the bank has to return the security deposit to the tenant upon tenant's request, unless the landlord notifies, within three months after the termination of the lease contract, the bank that he has taken legal action against the tenant.

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## Rent Increase

TCO places a cap on the amount that a landlord can demand to increase the rent for extension or renewal of lease periods. Accordingly, the agreed-upon rent increase under the lease contract cannot exceed the previous lease year's 12-month average of the rate of change in the consumer price index announced by TurkStat.

Besides, if the rent is determined in a foreign currency under the contract, parties cannot change the amount of rent for five years. This means that any rent increase envisaged in the contract would be deemed null and void, if the rent is denominated in foreign exchange.

## Payment Obligations

The protective nature of the law extends to substantial restrictions on payment obligations in favor of the tenant. In this regard, the tenant cannot be subjected to any payment obligations except for the rent and side costs that are commonly passed on to the tenant,

such as common area maintenance, utilities etc. Therefore, any contract provision requiring a payment obligation other than the rent and side costs would be unenforceable.

Similarly, TCO prohibits inserting penalty and/or acceleration clauses that may be triggered when the tenant fails to fulfil his payment obligations on time. Thus, penalty and acceleration clauses provided for in existing lease contracts of business premises will become invalidated as of 1 July 2020.

### **Conclusion**

The deferred provisions of TCO concerning lease contracts of business premises are set to come into force on 1 July 2020. The adaptation to the new era will give rise to confusions and create disputes among commercial tenants and landlords. No doubt, court precedents will be of pivotal importance to shed light on how to implement the concerning provisions of the law in the years to come.

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