

Turkey Enacts New Shopping Mall Regulation

Further to the enactment of the Law on the Regulation of the Retail Trade (No. 6585) (the "**Law**") in January 2015, the Ministry of Customs and Trade issued the new Regulation on Shopping Malls on 26 February 2016 (the "**Regulation**") setting out the criteria for shopping malls, the principles on how common areas in shopping malls should be used and expenses charged for them, the licensing of shopping malls and the rules on the allocation of space to certain professions within shopping malls.

What is a Shopping Mall?

Shopping malls satisfying the following criteria will be legally recognised as shopping malls and will be subject to the Regulation:

- comprised of a building or an integrated group of buildings;
- having a minimum 5,000 m² sales area;
- containing at least:
 - ten stores including one large anchor store (*i.e.* a retail store with a minimum four hundred square meter sales area); or
 - 30 stores (without including any large anchor store),which either sell or provide food, clothing, leisure, entertainment, cultural activities or similar goods and services;
- have common areas (as defined under the Regulation); and
- have a central management.

Developments that include other buildings together with a shopping mall will also be recognised as a shopping mall.

Permits for Shopping Mall Projects

Shopping malls must obtain a construction licence (*yapı ruhsatı*) and an occupancy permit (*yapı kullanma izni*). Depending on the location of the shopping mall, these permits (and any renewal or amendment process) must be obtained from either: (a) relevant municipalities; or (b) special provincial administrations.

Authorities granting construction licences must request a written opinion from the Union of Chambers and Commodity Exchanges of Turkey and the Confederation of Turkish Tradesmen and Craftsmen (together the "**Senior Professional Institutions**") within three business days of an application for a construction licence being made. The Senior Professional Institutions must provide their respective opinions within 15 business days. The opinions of the Senior Professional Institutions are considered advisory and if an opinion is not provided within the 15 business day period; the Senior Professional Institutions will be deemed as agreeing to the granting of the construction licence.

An occupancy permit will only be granted to shopping malls satisfying the required criteria set out on the Regulation. Occupancy permits for shopping malls are also considered as "workplace permits" (*işyeri açma ve çalışma ruhsatı*) and unlike other commercial properties, no separate workplace permit will be required where an occupancy permit has been issued.

Common Areas

Shopping malls must include common areas (use of which should be free of charge), such as social and cultural activity areas, emergency medical units, prayer rooms, nurseries, playgrounds and leisure areas for children. The use of car parks in shopping malls may be subject to certain fees to limit their use by individuals that are not customers or staff of the shopping mall in question.

An administrative fine will be imposed on shopping malls in breach of common area rules under the Regulation.

Owners and the management of shopping malls are jointly responsible to ensure that common areas are used in accordance with their allocated purpose and necessary safety measures are in place to cover any accidents likely to occur in these areas.

Common Expenses

Under the Regulation, periodic common area expenses such as electricity, water, heating, maintenance, repair (excluding renovations), security and cleaning will be calculated in accordance with the parameters set forth in the Regulation and will be charged to each of the stores *pro rata* to the area used by the particular store.

Other common expenses such as expenses connected to the management of the shopping mall and marketing expenses may also be charged to each of the stores in accordance with the Regulation.

The allocation of common expenses may be varied as agreed between stores and the shopping mall management in each store's lease, however, the Regulation prohibits charging of "common expenses" other than those listed above, to any store.

The common expenses must be calculated and paid in Turkish Lira.

Allocating Sales Areas to Tradesmen, Craftsmen and Traditional Professions

Shopping mall owner(s) and management are also required to allocate at least: (i) 5% of the total sales area to tradesmen and craftsmen at market lease rates/fees; and (ii) 0.3% of the total sales area to professions facing extinction and having a traditional, cultural or artistic value at a maximum of ¼ of the market lease rates/fees.

If such an area is not allocated to these professions an administrative fine will be imposed calculated on the market lease value for the unallocated area.

Continuous Discount

Shopping malls are only permitted to use signs indicating continuous discounted sales if each retailer within the shopping mall has discounted its prices in a continuous manner. This requirement does not apply to retailers providing food, fast moving consumer goods, hair dressing and tailoring services, entertainment, leisure or cultural activities or any other similar services.

An administrative fine will be imposed on shopping malls using such signs in breach of this requirement.

Transitional Period

The majority of the provisions of the Regulation became effective as of 26 February 2016.

Shopping malls that are in operation as of the effective date of the Law (*i.e.* 29 January 2015) must comply with certain requirements in accordance with the Regulation by 26 February 2017 (*e.g.* allocate the required common areas and establish a central management).

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