



Recent Developments in Turkey's Shopping Mall Regulations

Following the establishment of Turkey's first shopping mall in the late 80s, the number of shopping centers in the country has continued to rapidly increase. According to a May 2015 report by EVA Real Estate Appraisal and Consultancy¹, Turkey's shopping mall count has skyrocketed from just 12 in 1995, to 264 in 2011. This number has almost doubled over the past four years, and there are currently 411 shopping malls in Turkey. The demand for shopping malls continues to climb, and further growth is expected for 2016 and beyond.

In line with rapid growth in the shopping mall sector, large retailers and chain stores have also become a valuable resource contributing to the sustainability of the Turkish economy. However, this expansion has also reduced the market share of small-scale business organizations, craftsmen and tradesmen in the retail sector. In order to ensure balanced growth and development of retailers while satisfying the expectations of small-scale business organizations, the Ministry of Customs and Trade enacted the Law on Regulation of Retail Trade (the "**Law**") on 29 January 2015.

In addition to regulating the retail sector, one of the Law's primary aims was to encourage the establishment of new businesses, in order to create a sustainable and competitive environment. To achieve this goal and diminish the reign of large retail chains in Turkey's shopping complexes, the Law introduced certain provisions to facilitate the presence of small-scale businesses in shopping malls. The Law set forth that these matters would be regulated by a Ministry of Customs and Trade (the "**Ministry**") regulation.

In line with these developments, the Ministry recently issued the long-awaited Regulation on Shopping Malls (the "**Regulation**")², which entered into force on 26 February 2016 (the "**Effective Date**"). The Regulation introduces many new features governing the establishment and operation of shopping malls, and also creates certain obligations for retail businesses, small-scale businesses and shopping mall operators. Some key points set out under the Regulation are listed below:

1. What Qualifies as a Shopping Mall?

The Regulation sets out an official definition for "shopping mall". According to this definition, retail projects (i) located within a building or group of buildings, (ii) having a selling space³ of at least 5,000 square meters, (iii) providing food and beverage, clothing, amusement, leisure, cultural services or similar needs, (iv) containing at least ten workplaces, including at least one large retailer (i.e., a shop having a selling area of at least 400 square meters) or

¹ EVA Real Estate Appraisal and Consultancy Report on Potential Analysis of Shopping Malls for the years of 2015, 2016 and 2017 dated May 2015.

² The Regulation was published in the Official Gazette dated 26 February 2016 and numbered 29636.

³ The Regulation defines the selling spaces as the total area of workplaces within shopping malls, excluding (a) the office areas; (b) accommodation, storage and production areas; and (c) common areas.

containing at least thirty workplaces (if there is no large retailer) are deemed “shopping mall projects”.

If a retail project meets the criteria above, it will be deemed a shopping mall project and be subject to the provisions of the Regulation. Operators of shopping mall projects are obligated to fulfill the requirements set out under the Regulation.

2. Payment of Common Expenses and Marketing Expenses

The Regulation sets forth two types of operational expenses for shopping malls: (i) common expenses and (ii) marketing expenses.

- Common Expenses

Under the Regulation, common expenses are defined as expenses arising from the maintenance, security and cleaning of shopping malls, as well as from electricity, water, heating and refurbishment services for common areas within the malls. As per Article 11 of the Regulation, common expenses must be calculated and determined in accordance with the coefficients provided in the Regulation’s annex. Shopping mall operators are entitled to request common expenses from retailers, even if there is no provision under the lease agreement executed between a relevant retailer and the mall operator(s) (the “**Lease Agreement(s)**”).

- Marketing Expenses

Under the Regulation, marketing expenses are defined as expenses arising from the marketing and management of shopping malls. Shopping mall operators may only request the payment of these expenses from a retailer if there is a clear provision in the relevant Lease Agreement.

Unless otherwise agreed by the parties under the Lease Agreement, marketing expenses will also be calculated and determined in accordance with the coefficients contained in the annex to the Regulation. However, as explicitly stated in the Regulation, the parties to a Lease Agreement are entitled to determine their own calculation method for marketing expenses.

The Regulation also stipulates that both common expenses and marketing expenses must be calculated and paid in Turkish lira.

3. Status of Tradesmen and Craftsmen in Shopping Malls

In order to ensure the Law serves the needs of small-scale businesses, the Regulation also contains certain provisions easing the rental-fee burdens borne by certain small businesses operating in a shopping mall.

Under Article 12 of the Regulation, shopping malls must allocate 5% of total selling space to business operated by tradesmen and craftsmen. This allocation will be based on a lease agreement, in which the rental fee must be determined in accordance with the current market value of the relevant premises.

Moreover, shopping mall operators are obligated to allocate at least 0.3% of total selling space to businesses engaged in the sale of traditional crafts with a cultural or artistic value, which are at risk of extinction. The rental fee for these spaces must not exceed one quarter of the current market value of the relevant premises.

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The Regulation sets also forth a transitional provision to guide existing shopping malls undertake these allocation requirements. Accordingly, until the workplace allocation thresholds stipulated by the Regulation are met, operators of shopping malls that were open for business as of the Effective Date are obligated to grant priority to craftspeople when renting existing or future vacant premises.

If shopping mall operators do not fulfill the allocation requirements set out under the Law and the Regulation, they will be subject to an administrative fine.

4. Continuous Discounted Sales

Under the Regulation, shopping mall operators may only use advertising materials associated with “year-long sale campaigns” if all of the retailers operating within the relevant shopping mall have actually been carrying out year-long sale campaigns. Retailers providing food and beverage, amusement, leisure, and cultural services do not fall within the scope of this obligation.

5. Applying Charges for Parking Areas

The Regulation has introduced a novel concept regarding charges for vehicle parking areas within shopping malls. As per the relevant provisions, shopping mall operators are entitled to set a price for the usage of parking areas in order to limit access by third parties who are neither customers nor retailers of the mall. In accordance with this provision, shopping mall operators may determine charges for the temporary usage of parking areas as of the Effective Date of the Regulation.

6. Transitional Provisions

In addition to the transitional provision stipulated for the workplace allocation procedure, the Regulation also provides a transitional provision to bring existing shopping malls in line with the criteria stipulated under the Regulation (e.g., allocating a social area, emergency units, baby care rooms and children’s play areas, appointing a central management unit for the shopping mall). Given that the Regulation does not provide any other transitional terms, its other provisions (e.g., calculation and payment of common expenses and marketing expenses, parking area charges) entered into force as of the Effective Date and will apply to current relations between shopping mall operators and retailers.

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