TURNOVER MANIPULATION AND AUDIT

As a rule, *turnover* refers to the gross revenue generated from a business's commercial activities over a given period. In turnover-based lease structures, however, rent is typically calculated not on gross revenue but on turnover figures for net of taxes and other contractually agreed deductions, such as net sales or net profit. Therefore, the methodology used to calculate turnover – as well as the items to be included or excluded – must be defined in a clear, precise, and comprehensive manner in the lease agreement. Given that turnover may fluctuate depending on business operations and market conditions, any lack of clarity is likely to result in disputes between the parties.

Turnover manipulation refers to practices whereby the tenant, in breach of the lease agreement, understates its actual sales revenue or otherwise presents the data underlying turnover calculations in a misleading or inaccurate manner, with the aim of reducing the rent payable. The most effective way to mitigate this risk is to subject the tenant's reported turnover figures to audit.

In practice, the most commonly used audit mechanism involves the review of commercial documentation and accounting records relevant to turnover. In addition, many lease agreements expressly authorize the landlord to engage an independent audit firm to examine the tenant's turnover. Audit mechanisms in shopping mall leases are generally more sophisticated and comprehensive and are often implemented through system integrations that enable mall management to access sales data generated by stores directly. In this context, requiring the tenant to grant access to its POS systems, sales software, or ERP infrastructure allows for real-time or periodic monitoring of turnover data and constitutes a particularly robust audit mechanism.

Beyond contractual audit rights, landlords remains entitled to seek judicial determination of turnover and to recover any underpaid turnover-based rent. In this respect, the Cassation Court has held that the existence of a contractual audit right – allowing the landlord to have the tenant's turnover examined by an independent audit firm – does not constitute a condition precedent to litigation and does not prevent the landlord from filing a lawsuit directly.

It is generally accepted that a tenant's obligation to transparently disclose its commercial documents and accounting records to the landlord forms an integral part of the rent payment obligation in turnover-based lease arrangements. Explicitly stating in the lease agreement that these disclosure obligations are essential for the determination of turnover, are directly linked to rent obligations, and

that any breach constitutes a violation of a fundamental contractual obligation will significantly strengthen the landlord's position in potential disputes.

Where the lease agreement explicitly provides that turnover manipulation constitutes a material breach, the landlord may be entitled to terminate the lease for "*justa causa*" upon discovery of such manipulation by the tenant, provided that any contractual notice periods are duly observed.

Furthermore, where rent has been underpaid as a result of turnover manipulation, the landlord may seek a court ruling for the determination and recovery of the unpaid rent and may also pursue termination of the lease or initiate enforcement proceedings based on the tenant's default.

Authors

Büşra Özden
bozden@kolcuoglu.av.tr

Yankı Tosyalı
ytosyali@kolcuoglu.av.tr