



Turkey earthquake of 2023. Credit: EmirCem/Adobe Stock

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Post-earthquake developments in Turkish construction law

Due to its geopolitical location, Turkey is one of the world's most earthquake-prone countries.

On 6 February 2023, a magnitude 7.8 earthquake struck Kahramanmaraş in south-central Turkey. It was the most powerful earthquake recorded in Turkey since 1939,

and affected many cities across the country. This earthquake was followed by a second one of magnitude 7.5. Excluding undocumented immigrants, 15.7 million people were directly affected. Beyond the tragic loss of life, the earthquake had major economic effects as it caused serious changes

in the landscape: tens of thousands of buildings were destroyed. The consequences of this seismic catastrophe, both in terms of loss of life and property, currently constitute a crucial issue in Turkey.

This matter encompasses many perspectives of law. In response, the Turkish government has undertaken a series of initiatives aimed at expediting and enhancing the efficiency of the post-earthquake recovery process. In this respect, Law No 7452 on the Adoption of the Presidential Decree on Settlement and Construction within the Scope of the State of Emergency (Law No 7452), which came into force on 5 April 2023, introduced specific measures related to construction activities in areas affected by the earthquake. With the incorporation of Additional Article-1 into the aforementioned legislation on 15 July 2023, further provisions were introduced to facilitate the reconstruction of buildings damaged due to the earthquake.

These provisions, analysed herein, are designed to expedite the regeneration process to a greater extent than described in Law No 6306 on the Regeneration of Areas Under Disaster Risk (Law No 6306) which came into force on 16 May 2012. This article will provide an overview of Law No 6306 and analyse Law No 7452.

In 2012, the Turkish government reacted to the Condominium Law, which required a unanimous vote of unit owners to make material changes to buildings, by enacting Law No 6306. This is considered to be one of the most important regulations in the Turkish real estate law history.

Law No 6306 introduced a number of changes including the role and the authority of the Ministry of Environment, Urbanisation and Climate Change (the Ministry) and other administrative bodies in the regeneration process; the classification of risky buildings and risky areas; and the designation, registration and transfer of risky buildings. However, there is no doubt that the most important changes brought in by Law No 6306 was the agreement among owners, and the exemptions and other incentives offered.

Additional Article-1 has envisaged even faster processes. When considering Additional Article-1 of Law No 7452, the primary changes to the construction law are reviewed in terms of pre-implementation of regeneration projects, measures for the owners who are not part of the regeneration projects, the statutory

right to terminate construction contracts under certain conditions, financial support, and steps for the post-implementation of regeneration projects.

According to Law No 6306, owners who possess at least two-thirds of the land shares are allowed to conduct transactions as to the land-related law, including plot division, partial abandonment of a plot for public use, reconstruction, and land purchase (which ordinarily require the approval of all owners under the Condominium Law). According to Law No 7452, owners having the simple majority of land shares will be authorised to make those transactions.

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Under Law No 6306, in the risky and reserve areas, the shares of owners who oppose urban regeneration decisions are auctioned off to other owners and outside parties. If an owner does not consent to the regeneration decision, the corresponding land shares for dangerous regions and reserve areas will be registered in the name of the Treasury. If there is no buyer, the corresponding land shares for dangerous regions and reserve areas will be registered in the name of the Treasury.

According to Addendum Article-1 of the Law No 7452, there will be no auction for the land shares of owners not choosing to take urban regeneration initiatives or inaccessible owners, and those shares will be temporarily registered in the name of the Treasury until the completion of reconstruction. Furthermore, it is important to note that, owners will be notified of those issues via the e-Government portal during all procedures; those notifications will be announced for fifteen days in the relevant neighbourhood by the official neighbourhood representative. Thus, owners should frequently check their personal e-Government accounts because they will not receive official notices from the authorities: the abovementioned notifications will be considered as having been made in accordance with the provisions of the Notification Law.

Similar to the changes regarding the pre-implementation process, under Law No 7452, owners holding the simple majority of land shares are allowed to terminate previously signed construction contracts.

Also, despite obtaining a building licence within the scope of the Law No 7452, if the construction work of the new building has not started within one year, or the construction work has been stopped and the construction activity has not been continued with the team and equipment at a level that requires the completion of the project within at least six months due to reasons arising from the contractor, a decision can be taken by the simple majority of the owners for the termination of the contracts. Law No 6306 requires the approval of the owners holding at least two-thirds of the majority of land shares to terminate a construction contract.

Similar to Law No 6306, owners, upon request, will be granted construction credit. Within this scope, grants are given to the owners for one residential building and one workplace. However, grants and credits will not be given to those who are benefiting from the financial rights under Law No 7269 on Measures to be Taken and Assistance to be Provided Due to Disasters Affecting Public Life.

Law No 7452 aims to expedite the completion of regeneration projects in the earthquake-affected areas to ensure the housing needs of earthquake victims in Turkey

Real property purchase and sale, mortgage establishment and other land registry and cadastral transactions, contracts, licences, and other transactions to be carried out within the scope of the new law will be exempt from all kinds of taxes, duties and fees. Moreover, in line with Law No 6306, owners will be exempt from all kinds of fees and charges collected by municipalities during the construction process as well as inheritance and transfer tax. Also, loans extended to owners within the scope of Law No 7452 will be exempt from bank and insurance transaction tax. The details regarding loans and grants will be determined by a Presidential Decree which is expected to be published shortly.

The owners of apartments taking part in regeneration projects will receive independent

sections after the completion of building projects. The owners whose land shares are registered in the name of the Treasury, since they are not participating in the implementation, will be notified to take delivery of the independent section associated with their shares.

There are different provisions depending on whether the owner takes delivery. If the owner takes delivery, the owner will pay the remaining amount to the Treasury with a maturity of 84 months after the grant amount is deducted from the construction cost. If the owner does not take delivery, the owner's claim to the immovable property will expire. While the rights and annotations in the immovable land registration will remain over the amount of the sum contributed on behalf of the owner, in such a scenario, the Treasury will deposit an amount equal to the sum of the immovable's pre-earthquake valuation, and grant the amount into a time deposit account formed in the owner's name.

In conclusion, Law No 7452 aims to expedite the completion of regeneration projects in the earthquake-affected areas to ensure the housing needs of earthquake victims in Turkey as soon as possible by changing the legal requirements of some of the essential construction law transactions under Law No 6306.

However, while new legal provisions are advantageous for reviving the reconstruction efforts, some legal issues may arise due to the material differences of those transactions between Law No 6303 and Law No 7452. Thus, owners should carefully evaluate their new rights and obligations under Law No 7452 in their regeneration efforts.

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