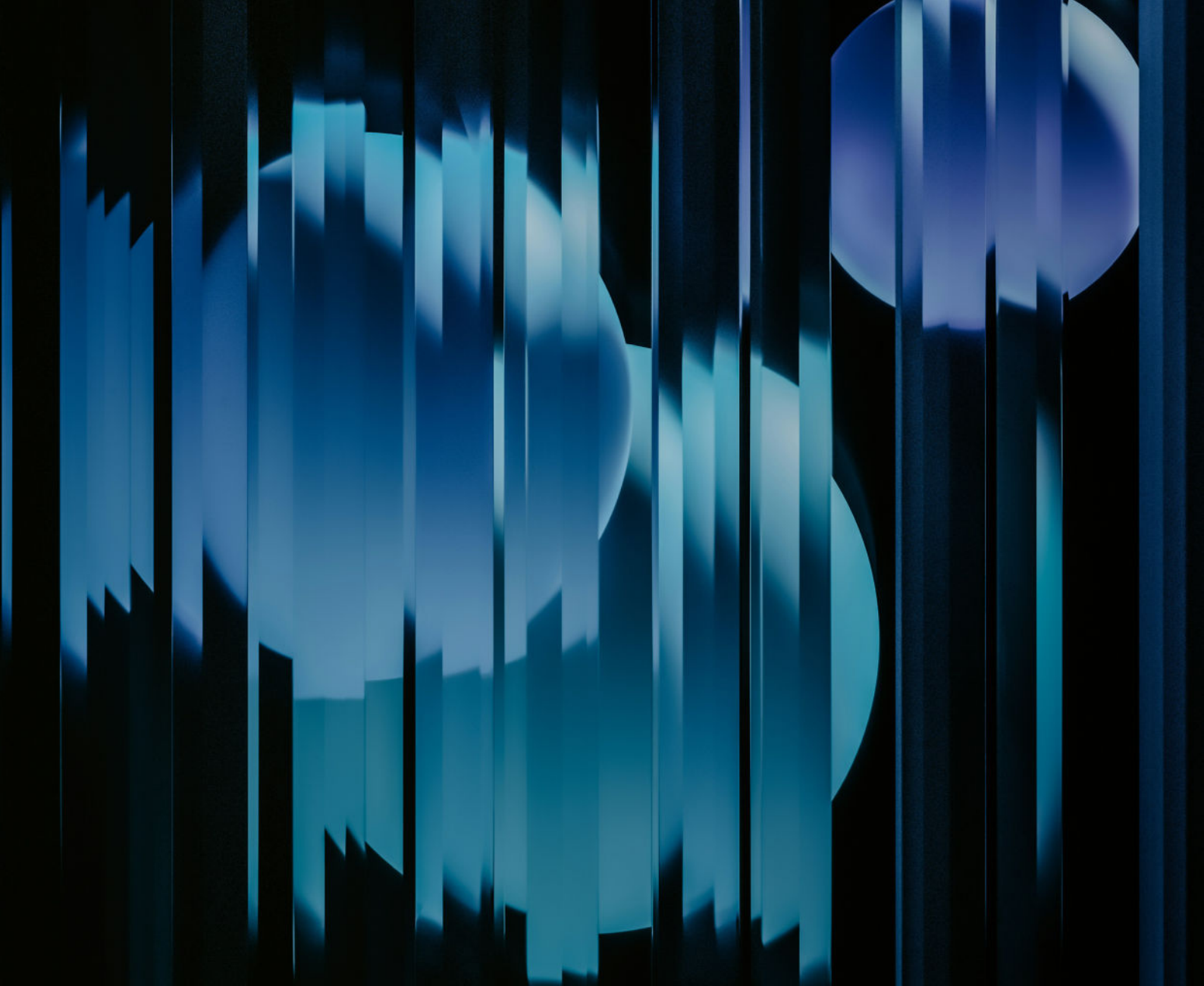


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Data Center and Advanced Technology Investments in Türkiye

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Introduction

Data centers are critical physical infrastructure facilities that constitute the backbone of the digital economy. A wide range of services, extending from cloud computing and artificial intelligence to big data analytics and financial technologies, are delivered through these facilities. The acceleration of artificial intelligence, the strengthening of data sovereignty policies, and sustainability objectives are transforming data center investments into a multidimensional investment field situated at the intersection of energy, real estate, commercial law, and national security. In this context, real estate law constitutes one of the principal axes directly determining the risk–return profile of an investment through land acquisition, rights of superficies, and long-term leasing structures, zoning and permitting processes, easements, and neighborhood law provisions.

Türkiye possesses the potential to become a regional hub owing to its geographical location, energy and transmission infrastructure, access to international fiber-optic transit routes, and current incentive mechanisms. This article examines global trends, competitive dynamics in Europe, the regulatory framework in Türkiye, incentive mechanisms, and the legal issues encountered in practice.

The Global Data Center Economy and Market Projections

International reports indicate that data center investments have accelerated in recent years, with artificial intelligence workloads serving

as the primary driver of growing capacity demand. The training and inference processes of artificial intelligence models require greater computing power and more intensive electricity consumption compared to traditional internet services. Accordingly, global electricity consumption and the demand for additional capacity are projected to continue increasing in the coming years. In addition to above-ground campus developments, efforts are also underway to develop underground and subsea solutions, as well as alternative architectures that offer thermal efficiency advantages.

The European Market and Türkiye's Position

While the European data center market has long been concentrated along the London–Paris–Amsterdam–Frankfurt–Dublin corridor, investments are increasingly shifting toward secondary markets such as Milan, Madrid, Warsaw, and Lisbon due to land and energy allocation constraints as well as environmental restrictions in these established hubs.

Türkiye is increasingly attracting investors' attention owing to its position at the crossroads of international fiber-optic networks, its suitability for alternative cooling solutions as a result of being surrounded by seas on three sides, and the potential of its growing domestic market. For large-scale cloud and hyperscale operators, the primary factors influencing investment decisions include reliable and scalable energy supply (preferably from renewable sources), backbone fiber connectivity, readily available installed capacity, and expansion potential. Strengthening Türkiye's position with respect to these criteria could transform the country into a regional digital hub.

In this context, not only the construction of facilities but also the sustainable “filling” of data centers through demand generation is of critical importance. Given the substantial capital costs involved, site selection requires a comprehensive risk assessment encompassing energy availability, transmission infrastructure, connectivity, physical and cybersecurity considerations, disaster risks, and supply chain factors. In practice, investments are typically developed in phases, with ultimate capacity being achieved over multiple stages, while the transition to operational status can be accelerated through design standardization.

The Legal Status of Data Centers under Turkish Legislation

Turkish legislation has not yet established a single, comprehensive definition under the category of “data center operator.” In practice, the legal status of such facilities is determined at the intersection of regulations governing hosting and access providers in the internet environment, operator obligations under electronic communications legislation, personal data protection requirements, sector-specific data localization rules, and cybersecurity regulations.

The evolution of this fragmented framework toward a uniform legal definition that enhances predictability for investors would contribute significantly to the scaling and development of the sector. From the perspective of critical infrastructure security, data centers serving sectors such as telecommunications, finance, and energy are expected to operate in full

integration with national cyber incident response mechanisms (for example, through coordination with USOM, the National Cyber Incident Response Center), while incident reporting and business continuity procedures are expected to be further clarified and standardized.

Cybersecurity and Investor Safeguards

Cybersecurity legislation provides a framework for the protection of critical assets, cyber resilience audits, and incident response mechanisms. From an investor confidence perspective, a key consideration is that procedures for obtaining digital evidence within authorized facilities are accompanied by judicial authorization and procedural safeguards. In practice, the scope of supervisory and intervention powers must be balanced against business continuity obligations and Service Level Agreement (SLA) commitments through appropriate contractual and technical measures.

Sector-Specific Regulations: Financial Data/Fintech and Telecommunications Infrastructures

For data centers hosting financial data/fintech and telecommunications infrastructures, sector-specific regulations must be addressed on a project-by-project basis and through a written compliance matrix. For financial institutions, the banking framework defines

approval processes for third-party/outsourcing and cloud usage, data classification and localization (placement) maps, ownership/escrow of encryption keys, audit and penetration-testing rights, as well as business continuity/DR testing periods and incident-notification SLAs. On the telecommunications side, the electronic communications regime sets minimum requirements regarding authorization status, network and information security obligations, retention of traffic/access records, and coordination with the national incident response center (USOM).

Accordingly, for each project there should be clear traceability between scope–licensing/notification timelines, supplier/subcontractor flow-down provisions, cross-border transfer and backup topologies, and the technology/cloud/software contract suite, mapping legal–contractual provisions one-to-one to technical controls.

While personal data protection legislation has tightened the regulatory framework governing cross-border data transfers, the number of situations in which domestic data hosting provides operational, and cost advantages continue to increase. Pursuant to sector-specific regulations, obligations concerning the local storage of data generated by multi-user social networking platforms, banking and payment systems, capital markets institutions, and critical transportation and communications infrastructure directly influence demand for data center services. The scope of these obligations, their exceptions, and applicable transition periods directly shape both contractual arrangements and facility architecture (including primary and secondary systems, disaster recovery sites, and geographic redundancy solutions)

Incentives and Tax Optimization: HIT Programs and Horizontal Instruments

Within the framework of industrial policy, programs focusing on advanced technologies, artificial intelligence, quantum computing, and robotics, together with dedicated calls for data center investments, provide tax incentives, grants and financing opportunities, as well as energy and employment support.

Program requirements typically include technical criteria such as minimum capacity thresholds, energy efficiency metrics (e.g., Power Usage Effectiveness (PUE) thresholds), and compatibility with artificial intelligence hardware (*).¹

In the application, evaluation, and monitoring phases, it is of critical importance that technical specifications are prepared in accordance with applicable standards and that investment timelines are synchronized with relevant public-sector schedules.

¹ (*) The Ministry of Industry and Technology of the Republic of Türkiye has launched a USD 30 billion program to be implemented by 2030. Within this framework, four key calls have been announced for data centers and related sectors:

- HIT–Data Center Call (USD 1.5 billion budget): Applicants must meet requirements including a minimum capacity of 30 MW, at least 50% compatibility with AI hardware, and a maximum PUE value of 1.4. The program offers tax incentives of up to 50%, energy support of up to 10% of the investment amount, and employment support.
- HIT–Artificial Intelligence Call (USD 1.6 billion budget): Designed for AI-focused cloud investments with a minimum investment amount of USD 100 million. The program provides a 60% tax incentive, grants of up to 40%, preferential financing of up to 70%, and market development support of up to 20%.
- HIT–Quantum Call (USD 300 million budget): Quantum computing projects with a minimum investment amount of USD 50 million are eligible for a 60% tax incentive and grants of up to 40%.
- HIT–Industrial Robotics Call (USD 1 billion budget): Projects with an annual production capacity of at least 5,000 robots are eligible for grants of up to USD 5,000 per robot.

In addition, the general investment incentive regime—including VAT exemptions, customs duty exemptions, tax reductions, and social security premium support—as well as power purchase agreements (PPAs) designed to stabilize energy costs over the long term and integration with Renewable Energy Resource Areas (YEKA), further enhance the financial viability of such investments.

On the tax side, considerations include corporate income tax planning, delineation of VAT-exempt versus non-exempt items, the impact of interest limitation rules on financing costs, transfer pricing documentation, double taxation treaties, and holding/special purpose vehicle (SPV) structures. Tax provisions and security packages should be aligned early with financing documents and lease/superficies agreements.

Technical Standards and the TSE Certification Process

In practice, standards covering the entire facility design, construction, and operation lifecycle—most notably the TS EN 50600 family of standards—serve as key reference frameworks. Certification processes conducted by the Turkish Standards Institution (TSE) for the design, facility, and operational phases include the on-site verification of architectural, energy, cooling, physical security, and operational systems and processes, and are maintained through ongoing surveillance audits. Certification levels relating to carbon footprint reduction, energy efficiency, and sustainability objectives, such

as “green,” “carbon-neutral,” and “sustainable” data center certifications, provide a competitive advantage from both marketing and regulatory compliance perspectives.

Energy Management and Sustainability

Data centers operating under eligible consumer status in the electricity market may diversify their energy procurement options, while optimizing their cost structures through licensing requirements, grid connection agreements, and system usage charges. Design considerations such as the integration of renewable energy sources, waste heat recovery systems, and water-use efficiency measures influence not only operating expenditures but also regulatory expectations and credit rating assessments. The anticipated gradual implementation of a national emissions trading system should be reflected in medium to long-term cost projections and contractual pricing mechanisms.

In the ESG/sustainability axis, beyond alignment with TS EN 50600, public green-growth and energy-efficiency roadmaps should be reflected in contractual KPIs; targets for energy efficiency (PUE/WUE), waste-heat recovery, and water-use efficiency should be operationalized in SLAs and reporting packs. Technical guidance issued by public bodies (including TÜBİTAK’s Green Growth Technology Roadmap and BİLGEM’s data center/system room guidance) may serve as references for design and procurement standards.

Property Structures and Rights In Rem: Land Acquisition, Rights of Superficies, and Long-Term Leasing

In data center investments, the legal structuring of real estate generally takes shape along three principal models: (i) acquisition of land ownership and direct development of the project, (ii) the establishment of a right of superficies—a limited real right allowing the construction and operation of facilities on land for a specified period on an independent and continuous basis—and (iii) long-term leasehold arrangements, revenue-sharing leases, and related contractual structures resembling build-operate-transfer models.

Under each of these alternatives, factors such as land registry annotations, lease terms and renewal options, the legal treatment of improvements and structures (including the distinction between removable and non-removable structures), assignment and sublease restrictions, step-in rights, and termination and eviction provisions directly affect the bankability and financing potential of the investment. In scenarios involving rights of superficies and long-term leases, it is essential to establish the necessary easements benefiting or burdening the property with respect to allocated areas, transformer and cooling facilities, and fiber-optic and energy transmission lines, including rights of way, utility transmission easements, and tolerance easements. To ensure enforceability against third parties, such rights should be duly recorded

in the land registry. Contractual arrangements should further clarify investors' rights of pre-emption and repurchase, purchase options, and rent indexation mechanisms, including adjustment formulas linked to energy and labor cost components.

Real Estate and Permitting Processes: Planning, Licensing, EIA, and Land Development

Data centers generally require zoning designations, and construction permits consistent with their function as technical infrastructure, energy, and information technology facilities. In practice, key planning considerations—including the designated use, floor area ratio (FAR), building coverage ratio (BCR), parcel consolidation or subdivision requirements, setback distances, and height restrictions under 1/5000-scale and 1/1000-scale development plans—should be verified at an early stage. In land development projects and zoning plan amendments, public dedications, road and green space requirements, and urban infrastructure contribution charges constitute significant cost factors.

The applicable public and private property regimes, the risks of expropriation or expedited expropriation, public interest determinations, and the implications of cultural heritage and conservation area restrictions should also be considered.

In addition, easements required for energy and fiber-optic transmission lines, transformer stations, and cooling facilities, together with

excavation and right-of-way permits, should be carefully assessed, including a conflict analysis of third-party rights in rem and contractual rights. Environmental Impact Assessment (EIA) requirements vary depending on project capacity, and studies relating to noise, waste heat, water use and discharge, and hazardous material storage should be integrated into project design.

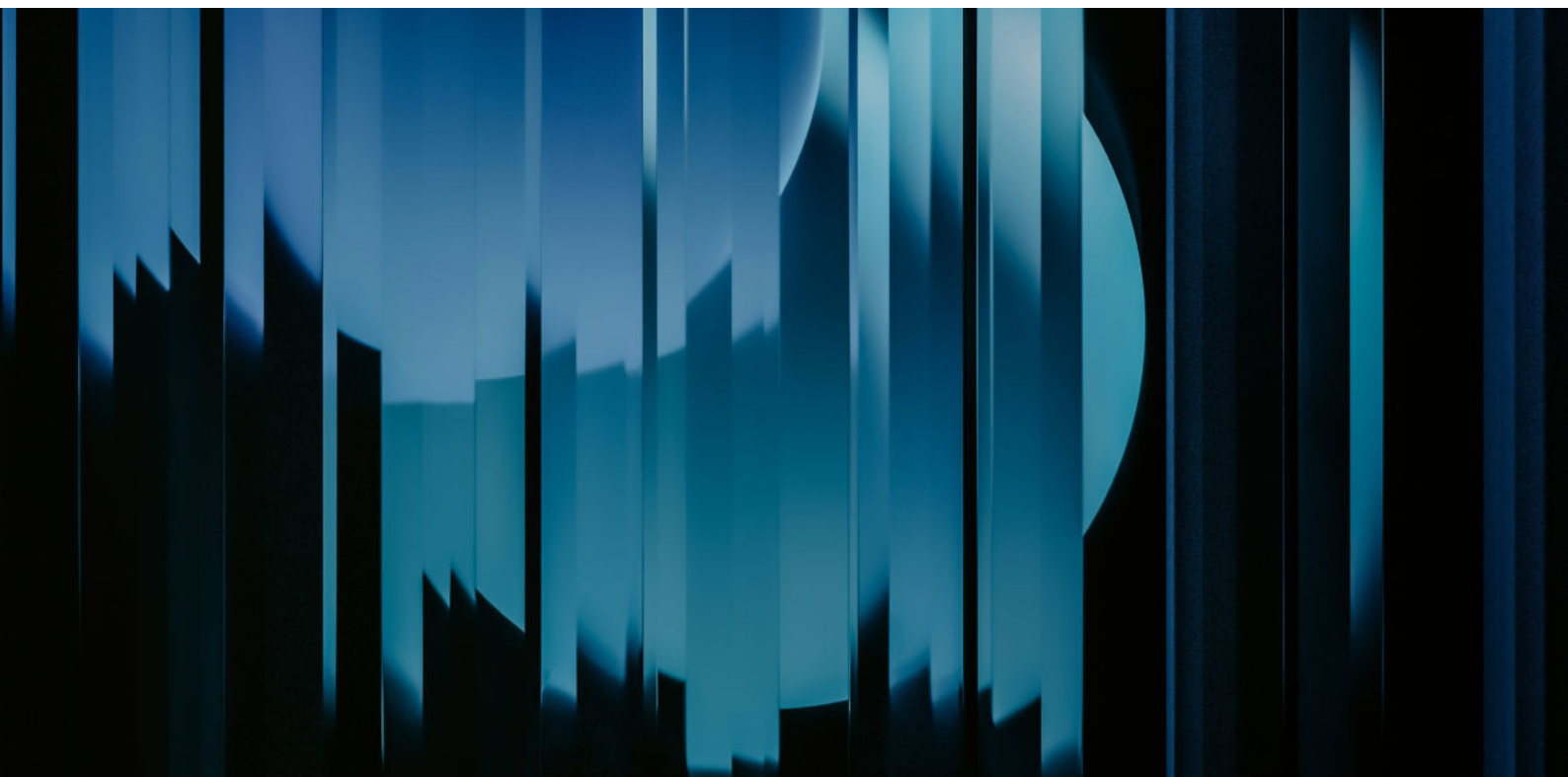
Furthermore, disaster risks—including earthquakes, floods, and fires—as well as soil and geological conditions, directly influence foundation design, seismic resilience measures, fire compartmentation systems, evacuation routes, and insurance arrangements.

During the permitting and occupancy approval process, it is critical to align site mobilization, construction supervision, partial acceptance procedures, and provisional acceptance milestones with the delivery and commencement dates stipulated under lease agreements or rights of superficies arrangements. Financing structures for landlords commonly rely on security instruments such as

mortgages, management rights, assignments of rental receivables, and bank guarantees, while corresponding protections for tenants—including land registry annotations, security interests, and step-in mechanisms—should be structured in a balanced manner.

Contractual Architecture: Colocation, Cloud Services, SLAs, and Risk Allocation

The contractual framework of a data center project varies depending on whether the commercial model is structured around colocation services, managed services, or a combination thereof. As a result, provisions relating to service level agreements (SLAs), downtime compensation, access and security protocols, change management procedures, data processing arrangements, subcontractor chains, licensing and compliance representations, as well as insurance requirements and limitations of liability, will differ accordingly.



From a real estate perspective, key contractual elements include the term of the lease or right of superficies and any renewal options, delivery conditions (shell and core or fit-out arrangements), permissions for structural modifications and alterations, use of common areas, parking and loading facilities, noise and waste heat thresholds, neighborhood law considerations, and the registration of land registry annotations and required consents.

Energy price adjustment mechanisms, capacity expansion options, rent adjustment provisions (including index-based and formula-based adjustment mechanisms), force majeure and energy interruption scenarios, as well as default, termination, and relocation procedures, constitute critical aspects of risk allocation. The protection of the tenant's ownership rights over equipment and server racks, any restrictions on the creation of security interests and their exceptions, and the procedures governing removal and decommissioning upon termination should be expressly regulated.

Exit scenarios and valuation: Share deals (equity), asset/business transfers, and wind-down scenarios should be addressed together with change-of-control notifications, assignment/consent provisions in customer contracts, licensing/authorization updates, and service-continuity planning. In landlord-tenant settings, de-installation/removal and hand-back protocols, the release of deposits/letters of guarantee, and available eviction routes and timelines should be assessed in advance from a time-and-cost perspective. Depending on the transaction, merger-control filing thresholds, closing tax items (VAT, stamp

duties, fees), and inventory/delivery chains in asset transfers are complementary elements of execution planning.

Financing Models and Investment Timeline

The substantial capital requirements associated with data center investments may be met through a variety of financing structures, including project finance, asset-backed securitization, Real Estate Investment Trust (REIT) structures, sale-and-leaseback transactions, and joint venture arrangements. The security package typically associated with real estate assets consists of mortgages over land ownership rights or rights of superficies, assignments of rental receivables, assignments of insurance proceeds, security interests over machinery and equipment, and revenue-sharing commitments.

In leasehold and rights of superficies arrangements, the clear definition of lenders' step-in rights and contractual assumption rights enhances the project's bankability and access to financing. A project timeline of approximately 24 to 36 months, encompassing construction, mechanical and electrical installation, testing and commissioning, and certification phases, should be planned with due consideration to administrative permitting requirements and supply chain constraints. Time-related costs may be reduced where incentive applications and TSE certification processes are coordinated effectively with procurement and tender schedules.

Valuation is modelled against the facility's technical level and certifications (e.g., TS EN 50600), the term and quality of the lease/SLA portfolio, the energy cost structure and PPAs, capacity fill curves, and expansion options. For exits, independent valuation, technical due diligence, and dataroom preparation should be integrated into the timetable alongside assessments of assignability and regulatory/permit transfer risks.

Foreign Investment Regime and Security Considerations

Under Türkiye's foreign direct investment framework, foreign investors are, as a matter of principle, afforded treatment equal to that of domestic investors, and there are no general restrictions on the establishment of data center facilities.

However, as the acquisition of real estate and the creation of rights in rem thereon (including rights of superficies and easements) may be subject to location-specific restrictions and approval requirements, a separate legal assessment should be conducted prior to land acquisition. Such an assessment should address issues including military prohibited zones and special security areas, coastal and forestry regulations, agricultural land classifications, and notification or approval requirements applicable to foreign-invested companies.

In addition, sectoral regulators—such as electronic communications and cybersecurity authorities—possess supervisory and intervention powers on grounds of national

security and public order. Accordingly, it is advisable that licensing and notification obligations, supply chain security measures, critical infrastructure components, and data localization maps be identified and documented at an early stage through a transparent and comprehensive compliance framework.

Conclusion

Although Türkiye possesses significant structural advantages for data center investments, there remains considerable room for further development in areas such as strengthening a uniform legal definition of “data center operator,” increasing the availability of large-scale, investment-ready sites for energy and land allocation purposes, and deepening the domestic supply and service ecosystem. Capacity constraints in Europe's primary data center markets, coupled with the ongoing shift of investments toward secondary markets, present a time-sensitive opportunity for Türkiye.

The key to success lies in ensuring regulatory predictability, adopting technically robust designs that comply with applicable standards, integrating sustainable energy solutions, and establishing effective coordination between permitting and incentive mechanisms that facilitate and accelerate investment processes.

GenTemizer is a Turkish law firm based in Istanbul, Türkiye. We advise various businesses in relation to their investments, M&A, competition law/antitrust, project financing and construction projects as well as on operational and dispute resolution matters in the context of the Turkish regulatory framework. We have also advised investors in relation to government sponsored privatisation projects.

We are listed in *Legal 500*, *IFLR1000* and *Chambers and Partners* as one of the leading law firms in Türkiye. Each of our partners have also been recognised as one of the leading lawyers in Türkiye. We understand and can meet the demanding requirements and innovative, responsive thinking required for an investment transaction in Türkiye.

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