

## **Real Estate Acquisition of Foreign Individuals and Foreign Legal Entities in Turkey**

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Real estate acquisition of foreign individuals or legal entities in Turkey has reached to a complicated structure due to several cancellations made by the Supreme Court and subsequent regulations enacted by the legislative body in order to comply with them. In accordance with the latest amendments, foreign individuals may acquire real estates in Turkey for work place or residential purposes which is registered and divided by an applicable development or application plan, only if complied with the legislative boundaries and under the condition of reciprocity. The total area of the real estates and limited rights *in rem* on real estates that an individual of foreign nationality may acquire also defined by the legislation.

As for the legal entities, the legislation has been amended according to their structure and purpose of establishment. For instance, the companies incorporated in Turkey by foreign investors or their Turkish affiliates, may acquire real estates or establish limited rights *in rem* in order to perform their core business stipulated in their articles of association. Moreover, foreign based companies which have been duly established in accordance with their own country's laws, are able to acquire real estates and limited rights *in rem* on real estates in accordance with the provisions of special laws.

Therefore, this article aims to provide an outlook to the issue of acquisition of real estates by foreign individuals and legal entities by mirroring the latest amendments and examining the recently promulgated laws.

### **Introduction to Turkish Legislation: Laws and Amendments**

Acquisition of Real Estates in Turkey by foreign national individuals and legal entities is regulated under article 35 and 36 of the Turkish Land Registry Law<sup>i</sup> (“**Land Registry Law**”). The matter of acquisition of real estates by companies which are duly established or participated to its foreign capital by foreign individuals or legal entities under Turkish Law is regulated under the Land Registry Law and article 3 (d) of Foreign Direct Investments Law<sup>ii</sup> (“**Foreign Direct Investment Law**”).

However, Supreme Court cancelled subparagraphs of article 35 of the Land Registry Law on April 26, 2005 and numbered 2005/14, for being contrary to the principle of reciprocity and the Turkish Constitution. However, the Supreme Court delayed the cancellation to take effect for three months, in order to grant necessary time to legislative body to enact replacing laws, so that any possible legal loophole is avoided.

The Supreme Court also cancelled a part of the replacement laws as well, enacted on December 29, 2005 . Following that, sub clause 7 and 8 of the article 35 of the Land Registry Law was regulated again by the Law numbered 5782<sup>iii</sup> .

As for the article 3 (d) of the Foreign Direct Investment Law, which enables the companies established and/or participated by foreign investors in Turkey to acquire real estates all of which the Turkish citizens can acquire, was cancelled by the decision of the Supreme Court. Subsequently, it was regulated by the Regulation on Acquisition of Real Estate by Foreign Capital Companies<sup>iv</sup> .

In line with the above mentioned amendments made on the laws and regulations, this article aims to clarify the acquisition of real estates in Turkey by foreign nationals and legal entities.

## **Real Estate Acquisition of Foreign Individuals in Turkey**

Foreign individuals may acquire real estates in Turkey for workplace or residential purposes which is registered and divided by an applicable development or application plan, only if complied with the legislative boundaries and under the condition of reciprocity.

**Reciprocity and legal boundaries:** The ‘reciprocity’ principle becomes an issue of consideration when a citizen of a country, where the Turkish citizens is provided with the right to acquire real estate under the relevant legislation, even if it be a *de facto situation*, wills to acquire real estate in Turkey. The existence of the same rights under the legislation of the country concerned shall not be deemed as necessarily adequate in order to effectuate the reciprocity principle. As for the issue of ‘legislative boundaries’, military forbidden zones and security zones, irrigation areas and areas reserved for the private education institutions could be given as examples of that.

**Acreage:** A foreign individual may not own more than a total of 2.5 hectares of real estate in Turkey. The size includes ownership of land as well as limited rights *in rem* such as usufruct, construction rights etc. Additionally, the sum of acreage of acquirable real estates and limited rights *in rem* by the whole foreign individuals at the territories located inside the boundaries of applicable or local development plan on the basis of central district and districts is limited to 10% of those territories.

However, the Council of Ministers, within the legally prescribed limits, is entitled to designate a different percentage in consideration of the importance of central district and districts in terms of infrastructure, economy, energy, environment, culture, agriculture and security. Proposals of public institutions and entities in this context are analyzed by a commission within Ministry with which “Head office of Land Registry and Cadastre” is bound up and which is composed of concerned delegates of Administration. Changes in surveys total areas which are within the implementation building scheme and within the community building scheme are announced by governorship to the commission up until the end of January of the consequent year.

These conditions and boundaries are not sought for the purposes of creating a pledge in favor of foreign individuals in Turkey. Furthermore, these conditions and boundaries are not applicable to the real estates acquired through legal inheritance by citizens of a Country that have reciprocity with the Republic of Turkey. For the real estate acquisition by means of transactions depending on death apart from legal inheritance, these conditions and boundaries set out shall be applied.

The Council of Ministers is authorized to determine the places where foreign individuals and companies which have legal personality established in foreign countries in accordance with their respective legislation, cannot acquire real estates and limited rights *in rem* on real estates as they fall within one of the following categories a) irrigation, energy, agriculture, mining, protected areas, b) the areas preserved for their faith and cultural characteristics c) special protection areas d) delicate areas due to their flora and fauna characteristics, and finally e) strategic areas. For national security and public interest considerations, such places are to be exempt from the scope of the right to acquire real estate given to foreign individuals or companies, by the of the proposals of relevant public institutions and organizations with registry based coordinated maps and plans

## **Real Estate Acquisition of Foreign Companies and Foreign Capital Companies**

***a- Foreign capital companies which are duly established or participated in accordance with the Turkish Law by foreign individuals and legal entities.***

First of all, it should be noted that foreign capital companies are the companies founded as per the Turkish Commercial Code and conformably registered to Turkish Trade Registry. That is to say that

these companies are subject to Turkish Law. The capital of those companies is wholly or partly owned by foreign individuals or legal entities. A company shall not be regarded as a foreign legal entity, merely for having foreign shareholders, simply because the nationality of a company and its shareholders' structure are different matters.

According to article 36 of the Land Registry Law and the Regulation on Acquisition of Real Estate by Foreign Capital Companies<sup>v</sup>, the companies incorporated in Turkey by foreign investors or their affiliate companies in Turkey, may acquire real estate or establish limited rights *in rem* in order to perform their core business stipulated in their articles of association.

This principle is also valid if mentioned real estates have been assigned to another foreign capital companies in Turkey or if a foreign company purchases the shares of the domestic corporation which owns the real estates. In case of liquidation of the foreign capital companies incorporated in Turkey, if foreign shareholders, an individual or a legal entity, will to acquire the real estates of the company, provisions of article 35 will be implemented

However, save for the Military Forbidden Zones and Security Zones Law<sup>vi</sup> such entities' acquisition of real estates in military forbidden zones, security zones and strategic zones is subject to the permission of General Staff or other Command Headquarters which was authorized by the General Staff. The acquisition of real estates by entities in special security zones is subject to the permission of governorship concerned.

***b) Incorporated foreign based business companies which are duly established in accordance with its own country's laws.***

According to article 35 of Land Registry Law, incorporated foreign based business companies which have been duly established in accordance with its own country's laws, are also able to acquire real estates and limited rights *in rem* on real estates in accordance with the provisions of special laws. The said special laws are,

- *the Petrol Law*<sup>vii</sup>
- *the Tourism Encouragement Law*<sup>viii</sup>
- *and the Industrial Areas Law*<sup>ix</sup>

According to article 12 (2) of the Turkish Petrol Law, incorporated foreign based companies could acquire real estates being limited to their core business activities.

According to article 8 (e) of the Tourism Encouragement Law of Turkey, incorporated foreign based business companies who would like to invest in Turkey with the purposes of tourism could acquire real estate within the development and improvement zones of tourism and tourist centers without being subject to any legislative boundaries and reciprocity principle by the decision of Council of Ministers.

According to article 3 (a) of the Industrial Areas Law, incorporated foreign based companies could acquire real estates limited to their core business activities by the decision of the Ministry of Industry and Trade and the Ministry of Environment and Forest.

These conditions and boundaries are not sought for the purposes of creating a pledge in favor of foreign based companies which are duly established in accordance with its own country's laws.

Moreover, said entities' acquisition of real estates and limited rights *in rem* on real estates in the areas following areas, a) irrigation, energy, agriculture, mining protected areas, b) areas of preservation for faith and cultural characteristics ; c) special protection areas d) delicate areas due to their flora and fauna characteristics and e) strategic areas are restricted for public policy reasons and the restricted areas of such kind are determined by the Council of Ministers by means of the proposals of relevant public institutions and organizations with registry based coordinated maps and plans.

According to article 35 of the Land Registry Law, other foreign companies are not able to acquire or establish limited rights *in rem* on real estates in Turkey, excluding foreign based companies which have been duly established in accordance with its own country's laws and foreign capital companies which are duly established or participated in accordance with the Turkish Law by foreign individuals and legal entities.

## **Conclusion**

There are certain points that need to be taken into consideration concerning real estate acquisition of foreign individuals and legal entities in Turkey.

As for the individuals, there are two main points to be taken into consideration. Those are **reciprocity principle** and **acquirable acreage** of total area which cannot be more than 2.5 hectares. Under the reciprocity principle, the relation or policy in real estate dealings between countries are taken into consideration. Therefore, an individual's nationality plays an important role regarding acquisition of a real estate.

Real estate acquisition of legal entities vary according to their structure of establishment. The companies which aim to invest in Turkey by establishing a company incorporated according to Turkish laws shall set their articles of association diligently in order to be able to acquire real estates for their purposes of establishment and also shall consider accordingly the areas under special protection by laws .

Furthermore, the companies which are established in accordance with their own country's laws are able to acquire real estates and limited rights *in rem* on real estates, in accordance with the provisions of special laws which are enacted to attract foreign investors on designated sectors.

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<sup>i</sup> *Published in the Official Gazette dated December 29, 1934 and numbered 2892) (Law No. 2644)*

<sup>ii</sup> *Published in the Official Gazette dated June 17, 2003 and numbered 25141) (Law No. 4875)*

<sup>iii</sup> *Published in official gazette dated July 15, 2008 numbered 26937).*

<sup>iv</sup> *Published in Turkish Official Newspaper dated November 12, 2008 and numbered 27052.*

<sup>v</sup> *Published in Official Gazette dated November 12, 2008 and numbered 27052*

<sup>vi</sup> *Published in official gazette dated December 22, 1981 numbered 17552, ( Law No: numbered 2565,*

<sup>vii</sup> *Published in the Official Gazette dated March 16, 1954 numbered 8659) (Law No. 6326),*

<sup>viii</sup> *Published in the Official Gazette dated March 16, 1982 numbered 17635) (Law No. 2634)*

<sup>ix</sup> *Published in the Official Gazette dated January 19, 2002 numbered 24645) (Law No. 4737).*