

REAL ESTATE ACQUISITIONS BY FOREIGN INDIVIDUALS AND FOREIGN LEGAL ENTITIES IN TURKEY

MANY DIFFERENT SYSTEMS ARE APPLIED within states with regard to the acquisition of real estate by foreigners. States may impose some limitations from a political perspective on property rights of persons on its territory who are not its own nationals (foreigners, stateless persons, refugees). The national law of the relevant state will determine if foreigners can own land on its own territory, and if this is possible under which conditions and limitations.

Turkey is under increasing attention in the international real estate property sector as one of the most attractive investment regions. It is obvious that this attention will bring great contribution to Turkish economy. For this reason, the acquisition of real estates by foreigners is a delicate and important issue that deserves attention.

In Turkey, foreigners have been given the right to acquire real estate but with some limitations. In Turkish law, foreigners and Turkish nationals do not have equal rights with regard to acquisition of property. Through Act No. 6302 on Certain Amendments to the Land Registry Act and Cadastre Act published in the Official Journal no. 28296 of 1 May 2012, certain amendments have been made in the Land Registry Act No. 2644 and Cadastre Act No. 3402 with regard to the acquisition of real estate by foreigners in Turkey. The most important amendment concerns the abolishing of the condition of reciprocity which applied to the acquisition of real estate by foreigners in Turkey since 1934. This condition was required for foreign real persons of nationalities of States determined by the Council of Ministers. Reciprocity concerning real persons means that the rights granted by a foreign state to its own nationals are also granted to Turkish nationals. With regard to business corporations having legal identity, it means that the same rights granted by foreign states to its own business corporations are also given to Turkish business corporations with legal identity. However, the reciprocity principle has now been abolished. Foreign real persons of the nationalities of states determined by the Council of Ministers may acquire real estate and rights in rem. This Law applies to real estates and rights in rem but not to pledges. The Council of Ministers has issued a list of

180 countries of which citizens shall be entitled to acquire properties in Turkey.

The legislation is arranged in different articles; the acquisition of property by foreign real persons and foreign legal entities. Art. 35 of the Cadastre Act cite “real persons of foreign nationality” and “business corporations having legal entity established in foreign states according to their own law”. For a corporation to be a “foreigner” the criterion is that it has to be established “in a foreign state according to the law of its country”. Therefore, the legal entity wishing to acquire real estate in Turkey must be established in another country according to its law.

Business corporations having legal personality and being established in foreign countries according to their own law are still subject to Art. 36, and they can acquire real estate and enjoy limited real rights in the framework of special laws.

Other than foreign legal persons and business corporations with legal personality, foreign legal persons such as foundations, associations, communities, funds and unions do not have the right to acquire real estate and are subject to limited real rights in Turkey. Requests made by such legal persons will be directly rejected by directorates of land registry.

Real Estate Acquisition of Foreign Real Persons in Turkey

According to Art. 35 of Act No. 6302 “Provided that statutory restrictions are complied with, when required by international bilateral relations and national interests, foreign real persons of the nationalities of states determined by the Council of Ministers may acquire real estate and limited rights in rem”. Therefore, it does not matter if there is reciprocity between Turkey and the state of nationality of the real person of foreign nationality who wants to acquire real estate in Turkey. They may acquire provided that the conditions indicated in the Act are complied with and that the Council of Ministers deems it appropriate.



Who is a foreigner? Foreigner is a person who has no link of nationality with the Republic of Turkey. According to this, a foreigner can be the national of another state or might be stateless or a refugee. The focus of this definition is on real persons and the criterion is the link of nationality. Nationality is the legal and political bond tying a person to a state.

The acquisition of real estate or limited real rights does not depend on the property being a workplace or residence according to the law. Foreigners can also acquire lands, fields, gardens and etc. The real estate does not need to be constructed. Foreign real persons and legal entities

can acquire unconstructed real estate with conditions. The foreign real person must produce a project within 2 years after the acquisition of this property. The project must be approved by the Ministry. The law does not define the content of the project; it does not have to be with regard to the construction. Projects may relate to agriculture, stock-breeding, tourism, health etc.

In the situations where the project is not produced in time; it is not put to the approval of the relevant Ministry or is not realized within the given time; the administration determines acquisition in violation of the provisions of the article or use in violation of the purpose of acquisition

(apart for legal necessity) the respective real estate and limited real rights must be liquidated by the owner within the time given by the Ministry which cannot be more than one year. Otherwise the Ministry will sell the real estate and the limited real rights, the proceeds of which will be paid to the owner of the right after deducting the expenses. The Ministry will monitor if the project approved is realized in time or not.

Where the nationals of states the Council of Ministers have not given permission to obtain real estate, have inherited property and have not transferred it after succession, an application to the relevant Revenue Office/Department will be made for the property to be liquidated. In this matter a distinction has not been made between legal heritage and testamentary dispositions. According to supp. Section 1 of Act No. 6302 transfer of heritage must take place at the Land Registry within two years of the death of the testator. Otherwise the Land Registry has the authority to apply to the court to obtain a certificate of inheritance and carry out the necessary tasks.

According to the Act, the total area of real estate and limited real rights of permanent quality, acquired by foreign real persons may not be more than 10% of the district surface area which is open to ownership by private persons, and no more than 30 hectares per person countrywide.

With this arrangement, there is a top limit to real estate and limited real rights that can be acquired by foreigners within Turkey. For various political and social reasons, the lawmaker aims to limit the number of foreigners resident in Turkey and to keep the numbers under control.

Council of Ministers could partially or completely limit or ban the real estate acquisition and limited real estate rights of the foreigners according to state, demographics, geographic area, time, number, proportion, kind, qualification, square area and amount when national interest requires. Within the perspective of the regulation there is a restraint of fundamental rights and freedom for the foreigners. Whereas under Art. 16 of the Constitution, fundamental rights and freedom of foreigners can only be restrained by a parliamentary act in line with international law. Hence the regulation is open to discussion for reasons of legal technicality and legal suitability.

Council of Ministers has authority to define the zones, upon advice from relevant public bodies containing registry maps with coordinates and plans showing the protected areas and strategic places as stated in the Act, where foreign national and legal entities established according to their law cannot obtain real estate and limited real estate rights, for public benefit and national security.

In case of demand by nationals of neighboring states, the real estate that is the subject of acquisition cannot be within the boundaries of a city that is at the border with their own country.

A stateless person is not considered a national according to the laws of any state, and cannot benefit from the diplomatic protection of any state.

A refugee is a person who was forced or has decided to abandon his own country because of political events taking place in the country of nationality, and who has not acquired the nationality of a new state and is not under the diplomatic protection of any state. Refugees find shelter in Turkey without the purpose to settle in, based on necessity and for temporary residence. These persons have never been considered in the same status with foreigners.

In line with the old practice when the reciprocity condition applied, stateless and refugees were not subject to this condition; the current legislation should not subject them to the condition of being in the acquisition list of Council of Ministers, going with the same logic.

With regard to persons having more than one nationality, if one of these is Turkish, he shall be considered a Turkish national; if all the nationalities are foreign; his real nationality shall be taken into account.

A foreigner may be the national of another state or might be stateless or a refugee. As an exception, persons who acquired Turkish nationality by birth and later lost it by obtaining permission and their children who have been processed together may acquire real estate and limited real rights in Turkey the same was as Turkish nationals. In addition, nationals of the Turkish Republic of Northern Cyprus are subject to the same status as Turkish nationals with regard to acquisition of real estate through inheritance, purchase and contract transferring property. Greek nationals of Turkish origin may directly apply to directorates of land registry together with the original documents showing their status and their passports. Request of Syria citizens will be examined by the relevant authorities.

Real Estate Acquisition of Foreign Companies and Foreign Capital Companies

“Foreign capital companies” are different from “foreign business companies”. For a company to be foreign, the criteria is; that it is established in a foreign state and in accordance with its own law, and that it is still operating. Art. 35 of the Cadastre Act contains the arrangement regarding these companies. On the other hand, in the framework of the legislation regarding foreign capital, companies

having legal personality subject to Turkish law, and established or participated by foreign investors in Turkey are foreign capital companies, which are explained in Art. 36.

Incorporated foreign based business companies which are duly established in accordance with its own country’s laws.

Within the framework of Art. 35, operative companies with legal entity established in foreign states according to their own national law can only acquire real estate and limited real rights in the framework of special legal provisions concerning their nature of business.

The establishment of mortgages in favor of these companies is an exception. The law only provides companies the right to acquire real estate and limited real rights; associations, foundations and other legal persons do not have this option.

Some acts provide for more detailed legislation in specific fields, for example The Act for the Support of Tourism, Petroleum Act, Industrial Zones Act, Privatization Act, Promotion of Cultural Investments and Initiatives Act. The acquisition of unconstructed real estate by companies with legal entity established in foreign states according to their national law is subject to conditions.

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

Through the amendment made to Art. 36 of the Land Registry Act, with the exception of the persons within the scope of Art. 28 of the Act No. 5901 concerning Turkish Nationality, real persons of foreign nationality, business corporations having legal entity and being established in Turkey that have the authority to appoint or remove from office the executive board of, or possess 50 % or more shares, may acquire or use real estate or limited real rights in order to conduct the activities indicated in the principal agreement.

However, the “ultra vires” principle has been eliminated in the Turkish Commercial Act No. 6012. Therefore coherent with this change, whether the expression scope of activity that takes place in the actual agreement, stated in Section 36 has lost strength and whether it should be taken into account will unfold during the implementation.

In cases where the companies described above (where foreigners have 50% or more shares) are directly or indirectly partners of a company established in Turkey, if the foreign investors entire share is 50% or more, if the for-

eign investor obtains directly or indirectly 50% or more of the shares of a domestic company with real estate ownership and if the percentage of foreign ownership in a foreign capital company with real estate ownership increases via direct or indirect share transfer, to 50% or more the same principles apply. The fundamentals of the Act focus on whether the foreigner company by becoming active in dominating, managing and controlling has the power to rule the company. Foreign capital companies other than the ones specified here can obtain real estate and limited real rights as per the legislation that the domestic capital companies are subject to The use of real estate is observed by the governorship of the district where the estate is situated and the estate can be liquidated in accordance with the principles where necessary. The Act also states exceptions where the section will not apply.

Applications in the framework of this Act shall be made to the Land Registry Office. Official contracts aiming to transfer real estate must be made in The Land Registry Office where the property is found. The acquisition of property is possible through registry at the Registry Office. Before the official sale, it is also possible to prepare a preliminary sales contract in the presence of a notary.

Conclusion

The legislation arranges the acquisition of property of foreign real persons and foreign legal entities in different articles. Reciprocity principle has now been abolished, with this new legislation international relations and national interest is a priority and Council of Ministers is given authority.

On real estate purchases by foreigners, this new legislation contains regulations parallel to the development of international commercial rules.

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