

I. REAL ESTATE ACQUISITION OF FOREIGN REAL PERSONS IN TURKEY

Real estate acquisition of foreign real and legal persons has been regulated in the article 35 of the Land Registry Law numbered 2644 with law numbered 5444 and dated December 12,2005 which was established in the Official Gazette of 26046 numbered and dated January 7,2006. New fundamental principles was regulate with this new law for acquisition real estate of foreign real persons and trade companies having legal personality and established in foreign countries according to the laws of these countries in Turkey.

New form of the article 35 of the Land registry Law is as follows:

“With the reservation of reciprocity and compliance with legal restrictions, foreign real person can acquire real estates for the purposes of using as residence or business aims in Turkey that are separated and registered for these purposes in the implemented development plans or localized development plans. The same conditions shall be stipulated in the establishment of limited real rights on real estates. The total area of the real estates and limited real rights on real estates that a real person of foreign nationality can acquire all over the country can not exceed 25.000 m². Within the same conditions set out in this paragraph Council of Ministers is authorized to increase the area up to 30 hectares.

Companies having legal personality established in foreign countries according to the laws of these countries can acquire real estates and limited real rights on real estates in Turkey according to the provisions of special laws.

In case of establishing mortgage in Turkey in favor of foreign real persons and trading companies having legal personality established in foreign countries according to the laws of these countries the conditions and restrictions set out in first and second paragraphs shall not be applied.

With the exception of foreign real persons and trading companies having legal personality established in foreign countries according to the laws of these countries, no one can acquire real estates and limited real rights on real estates in Turkey.

For the real estates acquired through legal inheritance by citizens of a country that have reciprocity with Republic of Turkey, the conditions and restrictions set out in the first paragraph shall not be applied. For the real estates acquisition by means of transactions depending on death apart from legal inheritance, the conditions and restrictions set out in the above paragraphs shall be applied. Real estates and limited real rights on real estates acquired through legal inheritance by citizens of countries that do not have reciprocity with Republic of Turkey shall be liquidated after their transfer transactions are performed.

De jure and de facto circumstances shall be taken as basis in determination of reciprocity. In implementation of this principle for the citizens of countries that have not granted land ownership rights, it's stipulated that the rights granted by a foreign country for real estate acquisition to its own citizens should also be granted to citizens of the Republic of Turkey.

The Council of Ministers is authorized to determine the places where foreign real persons and trading companies having legal personality established in foreign countries according to the laws of these countries can not acquire real estates and limited real rights on real estates within the areas in terms of irrigation, energy, agriculture, mine, and protected areas, and belief and cultural featured areas and special protection areas and touchy areas due to flora

and fauna features, strategic areas due to public interests and country security by means of the proposals of relevant public institutions and organizations with registry based coordinated maps and plans, and the rate of the areas where foreign real persons can acquire real estates not more than 5 per thousand according to the provinces and provinces' areas. Proposals of the public institutions and organizations within these scope shall be examined, appreciated and submitted to the Council of Ministers by means of a commission that carries out studies within the authority set out in this paragraph and constitutes of relevant representatives of administration in the structure of the ministry that General Directorate of Land Registry and Cadastre is related to.

Map and coordinate values concerning the military forbidden zones, military and private security zones and strategic zones that are determined after the enforcement of this law and their alterations shall be given without any delay by the Ministry of National Defense to the ministry that General Directorate of Land Registry and Cadastre is related to.

The parcels needed to be expropriated or to be annotated on land register due to be in the areas determined in the above paragraphs shall be notified by relevant institutions to relevant Land Registry Offices.

The real estates and limited real rights on real estates acquired contrary to the provisions of this article or determination of misuse according to the purpose of acquisition without legal necessity shall be converted to value and paid to owner of unless the real estates liquidated by the owner within the period given by Ministry of Finance.”

I.1.RECIPROCITY PRINCIPLE

In the new regulation, instead of exact equivalent implementation of reciprocity principle, it's stipulated that the rights given by a foreign country to its own citizens or trade companies having legal personality and established according to its own laws, should also be given to citizens and trade companies of the Republic of Turkey.

The Council of Ministers expressed what should be understood from the reciprocity principle in its decision dated May 29, 1940 and numbered 2/13394. According to this decision, in addition to legislative regulation of reciprocity principle, practical applicability of it is also required for its existence. By this decision, in which it's taken into consideration that reciprocity in law will not indicate actual situation, restrictions encountered in a foreign country by the citizens of the Republic of Turkey, in case of their application, are wanted to be taken as a basis in implementation of reciprocity. Therefore, for the existence of reciprocity between our country and a foreign country about real estate acquisition, reciprocity must be both in law and in practice. According to this principle, for real estate acquisition of a foreign country's citizen or trade company in our country, the citizens and trade companies of the Republic of Turkey should also have the right to acquire real estate in this foreign country and this right must be accepted by laws and must be practically applicable.

I.2. EXCEPTIONS OF RECIPROCITY PRINCIPLE

Although the first condition is reciprocity for real estate acquisition of foreign real persons in our country, reciprocity principle has some exceptions in terms of real persons. These

exceptions are as follows:

- a. Since haymatlos persons have no state citizenship, there isn't any state to decide about reciprocity. For this reason, haymatlos persons are exempted from reciprocity principle.
- b. According to the article 7/2 of "Convention on Legal Situation of Refugees" dated July 28, 1951 and ratified by Turkey with the law dated August 26, 1961 and numbered 359, the refugees are exempted from reciprocity principle in a country after three years of residence. The refugees in Turkey are also subjected to the same provision. It is enough for refugees to prove this situation with an official document for exemption.
- c. According to the article 8/E of the Law for Encouragement of Tourism numbered 2634, foreign real and legal persons who want to make investment for tourism objective in Turkey, can acquire real estate by the decision of the Council of Ministers in tourism areas and centers being exempted from reciprocity principle and restrictions formulated for foreigners.

I.3. LEGAL RESTRICTIVE PROVISIONS

The second condition for real estate acquisition of foreign real persons in our country is to comply with restrictive provisions involved in law. Some restrictions are involved in our laws concerning real estate acquisition of foreigners. These restrictive provisions are as follows:

- a. According to regulations involved in the Military Forbidden Zones and Security Zones Law numbered 2565 which restricts geographically real estate acquisition of foreigners in our country, it is not possible to sell, transfer and rent real estate located within military forbidden zones and security zones, to foreign real and legal persons.
- b. According to the article 35 of the Land Registry Law numbered 2644, foreign real persons can not acquire real estate more than 2,5 hectares in our country, however for acquisition up to thirty hectares, decision of the Council of Ministers is required. Legal inheritance is exception of this rule.

I.B. REAL ESTATE ACQUISITION OF FOREIGN trade companies having legal personality IN TURKEY

Companies having legal personality established in foreign countries according to the laws of these countries can acquire real estates and limited real rights on real estates in Turkey according to the provisions of special laws.

Relevant special laws:

- Law for Encouragement of Tourism numbered 2634
- Petroleum Law numbered 6326
- Industry Regions Law numbered 4737

In case of establishing mortgage in Turkey in favor of foreign real persons and trading companies having legal personality established in foreign countries according to the laws of these countries the conditions and restrictions set out in first and second paragraphs shall not be applied.

With the exception of foreign real persons and trading companies having legal personality established in foreign countries according to the laws of these countries, no one can acquire real estates and limited real rights on real estates in Turkey.

I.C. REAL ESTATE ACQUISITION OF FOREIGN CAPITAL COMPANIES

The expression of "foreign capital companies" is usually confused with the expression of "foreign company".

First of all, it should be stated that "foreign capital companies" are established according to the provisions of the Turkish Trade Law in Turkey and enrolled in Turkish Trade Register. In other words, these countries are subjected to the legal provisions of the Republic of Turkey. Only, the whole or part of their capital belongs to foreign real and legal persons. Availability of foreign shareholders within the company will not include it within the status of foreign legal personality; because nationality of the company and nationality of its shareholders are different matters.

The Law for Encouragement of Foreign Capital numbered 6224 and dated January 18, 1954 was repealed by Foreign Direct Investment Law numbered 4875 and dated June 5, 2003 that entered into effect being published in the Official Gazette numbered 25141 and dated June 17, 2003, new provisions were adopted to encourage and increase foreign direct investments, to protect rights of foreign investors, and to transform permission and ratification system to informative systems in realization of foreign investments.

With regard to the subject, a circular numbered 1363-100/841 and dated August 7, 2003 was announced to all our units through our regional directorates and it was stated that implementation would be carried out within the framework of the following statements. By the Foreign Direct Investment Law numbered 4875, foreign investors are subjected to equal treatment with domestic investors; permissions and ratifications like investment permissions, company establishment permissions, were removed. Moreover, companies having legal personality that foreign investors participate in or establish, in our country, are allowed to acquire real estate or limited real rights in areas where acquisition of these rights is allowed for Turkish Citizens.

Companies established according to the repealed Law numbered 6224 or that will act according to the Law numbered 4875 which is about the activities of foreign capital companies in our country, are considered as companies of the Republic of Turkey, according to criteria of establishment place or administration center. For this reason, real estate acquisition and other demands concerning land register of foreign capital companies that either obtained activity permission according to the repealed Law for Encouragement of Foreign Capital or will act according to the Foreign Direct Investment Law numbered 4875, are concluded by relevant Land Registry Offices implementing the same methods and rules as for companies established according to the Turkish Trade Law, after examining authorization documents given by the Trade Register Authorities that indicate the competent person and competence for real estate acquisition of the company.

II. TRANSFER

It is free to transfer through banks and private financial institutions, revenue and value of sale earned from real estate and real rights acquired by foreigners with or without exchange of foreign currency.

III. AUTHORITY OF APPLICATIONS

By the article 26 of the Land Registry Law numbered 2644, the duty and authorization to regulate contracts concerning property and real rights excluding property were given to Land Registry Offices.

Foreigners who want to acquire real estate or benefit from real rights apart from property will

make their applications to the Land Registry Office where the real estate is located. Detailed information about the subject can be provided from the General Directorate of Land Registry and Cadastre.

IV. REQUIRED DOCUMENTS FOR APPLICATION

There is no difference between Turkish citizens and foreigners in terms of required documents for application.

IV.A. In terms of Real Persons,

- a. Title deed of the real estate if available, otherwise a document indicating the city block and parcel of the real estate or verbal statement of the owner.
- b. Identity card or passport of foreigner given by his/her own country and two small photographs.
- c. If the person applying for demand is representative, a power of attorney of the representative, and identity card with photograph, two small photographs of the representative, and if some of the purchasers are not present during the transaction, identity card with photograph, two small photographs and power of attorney of the representatives that represent the purchasers, are required.

IV.B. In terms of Legal Persons

- a. Companies established according to the Foreign Direct Investment Law numbered 4875 will show competence document given by Turkish Trade Registry, a document given to the person assigned basing on this, and signatures certificate.
- b. Foreign trading companies established in foreign countries according to their laws are required, in compliance with the legislation of their country, to show a document having the effect of competence document given by relevant authorities.

With regard to charges and taxes required to be paid in the course of transactions, there is no difference between persons of foreign nationality and citizens of the Republic of Turkey. However, when asking the competent military post to determine whether the real estate demanded by real or legal person of foreign nationality is located out of Military Forbidden Zones and Security Zones or not, if any control in the field is needed to mark on map of 1/25000 scale where the real estate is, a kind of service value will be paid according to transaction named “showing the parcel in its place.”