

GEDİK & ERAKSOY

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Real Property Acquisition by Foreigners in Turkey

Turkish Parliament enacted certain amendments for Article 35 and 36 of the Land Registry Law No 2644 in 2012 which regulates acquisition of property by foreigners. The recent amendments aim to boost influx of foreign capital which stands as a key initiative in Turkish economy.

Overview

Property acquisition of foreigners has always been a sensitive issue in Turkey on the grounds of security, political risks and protection of national interest. Consequently, several restrictions on real property acquisition of foreigners in Turkey have so long been practised and valued. Based on changing global atmosphere and trends in globalization of the capital markets, there has been a remarkable change on the limitations for real property acquisition of foreigners in Turkey by the enactment of the Law on Amendments on Land Registry Law and Cadastral Law numbered 6302 (**Law No 6302**) in 2012. It is surely beyond doubt that another reason for the introduction of certain changes to real property acquisition of foreigners is to meet high investor interest in Turkey.

Land Registry Law No 2644 (**Land Registry Law**), which is in effect since 1934, is amended by the Law No 6302 within the framework of EU principles as Turkey is a candidate country for EU membership. For this purpose, Law No 6302 abolishes the reciprocity principle which only allows the foreign nationals to acquire real property and limited rights in rem in Turkey whose governments allow Turkish citizens to purchase real property and limited rights in rem in their country in line with the EU principles and accordingly amends Article 35 and Article 36 of Land Registry Law, which regulates acquisition of real properties and rights in rem in Turkey by foreign real persons and legal persons. Although, reciprocity would not be a key parameter for acquisition by foreigners, Council of Ministers is, in any case, entitled to further limit, restrict, and partially or fully cease or prohibit acquisitions of real property and limited rights in rem by foreign real persons and legal entities in Turkey in the interest of the state.

Law No 6302 brings forward the following amendments.

LEGAL STRUCTURE FOR REAL PERSONS

- Law No 6302 abolishes the reciprocity condition for most of the countries. There are currently 183 countries specified by the Council of Ministers which will be permitted to acquire real property and limited rights in rem in Turkey without need of further conditions to meet.
- Prior to the amendment introduced by Law No 6302, there was a condition for foreign real persons to use the acquired real property only for the purposes of offices or residences. Such restriction was also revoked by the Law No 6302.
- The total area of the real property and the limited rights in rem, which is continuing and independent, that a foreign real person is permitted to obtain across the country, is raised to 30 hectares from 2,5 hectares. Council of Ministers is authorized to increase this amount up to 60 hectares per person. Notwithstanding the above, the total area of the real property and limited rights in rem that can be acquired by foreign real persons in one district cannot exceed 10 per cent of the total area of private

properties in such district. However, the restrictions in terms of total area do not apply when establishing mortgage in favour of foreign real persons. Thus, foreign real persons have equal standing with Turkish citizens and are not subject to any limitations in case of mortgages established in favour of them.

- If the real property acquired is unconstructed, foreign real person who are willing to construct a structure on such real property should submit the project that will be developed on that real property for the approval of the Ministry within two years.
- Acquisitions by foreigners are subject to limitations and restrictions in relation to Military Forbidden Zones, Military Security Zones and Strategic Zones.

LEGAL STRUCTURE FOR FOREIGN LEGAL PERSONS

Foreign legal persons do not enjoy the same advantages that are offered to foreign real persons and applicable rules vary according to their country of incorporation or capital origin.

Legal Entities Incorporated in Foreign Jurisdiction

- Companies having legal personality incorporated in accordance with laws of foreign countries can only acquire real property or right in rem according to the provisions of special laws, *i.e.*, Law No 6326 on Petroleum, Law No 4737 on Industrial Zones and Law No 2634 on Incentivizing Tourism. Any legal entity apart from companies established in other countries such as foundations, organizations, associations or similar entities, cannot acquire real property or in rem rights.
- Companies established abroad have equal standing with Turkish companies before the law in terms of establishing mortgage on their behalf as in the case of foreign real persons. Consequently, limitations for foreign companies do not apply for mortgage rights established in favour of them.
- Rules regarding unconstructed real property also apply for foreign legal persons and thus, the project to be developed on that immovable in relation to constructing a structure should be submitted to the approval of the Ministry within two years.

Legal Entities Incorporated in Turkey with Foreign Capital

- Article 36 of the Land Registry Law regulates real property and right in rem acquisitions made by legal persons that are incorporated in Turkey with foreign capital. Limitations or regulations stipulated under Article 36 of the Land Registry Law do not apply to all legal persons. The notion of “company with foreign capital” must be differentiated from foreign legal persons and must be separately examined.
- There are certain situations where companies are assumed as company with foreign capital and subject to Article 36 of the Land Registry Law:
 - ▲ If 50 per cent or more shares are owned by foreign real persons, companies incorporated in accordance with the laws of foreign countries, or international institutions; or
 - ▲ If foreign real persons, companies incorporated in accordance with the laws of foreign countries, or international institutions have the right to assign or depose the majority of the persons having the management rights in that company established under Turkish laws.
- The companies which meet the criteria above can acquire ownership of a real property or in rem rights only if such acquisition is in relation to scope of activities stipulated in its articles of

association. However, acquisition of a real property or rights in rem in a Military Restricted Zone, Military Security Zone or a Strategic Zone is subject to the approval of the commanderships which are authorized by the General Staff. The acquisition is also subject to the Governorate's approval, where the immovable resides, if the immovable is in a special security zone.

- Limitations stipulated in Article 36 of the Land Registry Law do not apply in case of:
 - ▲ mortgages established in favour of companies incorporated with foreign capital;
 - ▲ acquisition of a property as a result of a foreclosure;
 - ▲ transfer of a property or a right in rem as a result of a merger or demerger;
 - ▲ acquisition of property or rights in rem in special investment zones such as Organised Industrial Zones, Industrial Zones, Technological Development Zones and Free Trade Zones; or
 - ▲ transactions made by banks that are deemed as "credit transactions" in accordance with Banking Law No 5411 or when a real property is acquired in consideration of debt collection of a bank; provided that obligation to dispose such real property remains within the context of related laws.

In conclusion; abolishment of reciprocity principle by Law No 6302 would bring a breath of fresh air to Turkey's developing market by allowing 183 country citizens to acquire Turkish lands. One should keep in mind that annulment of reciprocity requirement has not been reflected to all laws which also require reciprocity to allow foreign real or legal persons to acquire real property or right in rem in Turkey. For instance, in accordance with the Privatization Law No 4046, sale and transfer of real estate to foreign real persons and/or legal entities within the framework of the privatization process should be conducted on the basis of rules of reciprocity. As such, lack of consistent legislation may cause debates in the implementation of law, which would surely be solved in the near future with further legislative amendments.

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