

REAL ESTATE INVESTMENT IN TURKEY

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Article by AKUGUR LAW FIRM

Legal Framework

The conditions for acquisition of a real estate property by foreign persons and Turkish citizens are different in accordance to Turkish Law.

For Turkish citizens, the conditions are stated mostly by the Turkish Civil Code, whereas the Land Registry Law dictates most of the conditions for foreigners. On the other hand, there is no difference between Turkish citizens and foreigners in terms of the documents required for application.

According to the Turkish Civil Code numbered 4721 and dated November 22, 2001, acquiring property requires registration to the Turkish Land Registry. However there are four ways to own a property without registration: occupation, inheritance, condemnation or acquisition by enforcement proceeding or verdict.

III. Real Estate Acquisition of Foreign Persons in Turkey

Legal Framework

A. Real Estate Acquisition of Foreign Real Persons in Turkey

Real Estate acquisition by foreign real and legal persons is regulated in article 35 of the Land Registry Law. The previous version of Article 35 had many limitations regarding real estate acquisitions by foreigners; however, in July 2003 there was an amendment to Article 35 by a Law numbered 4916, which removed many limitations regarding real estate acquisitions by foreigners. Then, in March 2005, the Constitutional Court abolished Law 4916, and after a long debate, Article 35 was again amended by a Law numbered 5444¹, which has harsher conditions. The new form of Article 35, paragraph 1 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.”

As is seen in this (first) paragraph of Article 35, the real estate acquired by a foreign real person should be;

- i. Used for residential or business purposes.
- ii. Within the boundaries of implemented development plans or localized development plans.

Other conditions for acquisition of real estate by a foreign person are:

- i. The acquisition should comply with the legal restrictions stipulated in Turkish Legislation;

- ii. There must be both *de jure* and *de facto* reciprocity between Turkey and the nationality of the foreign real person acquiring real estate according to Article 35 of the law² and the Council of Ministers decision dated May 29, 1940 and numbered 2/13394. By this decision, for the existence of reciprocity regarding real estate acquisition between Turkey and a foreign country to be recognized, reciprocity must be both **in law** and **in practice**. This principle means that for real estate acquisition by a foreign country's citizen in Turkey to be permissible, Turkish citizens must also have the right to acquire real estate in the aforementioned foreigner's country, and this right must be accepted by laws and be practically applicable.³ The first condition is reciprocity for real estate acquisition of foreign real persons in Turkey, whereas the reciprocity principle has some exceptions in terms of real persons.
- iii. The total area of real estate acquisition and limited real rights on real estates by a foreign real person in Turkey cannot exceed 25.000 m² within the entire country.

B. Real Estate Acquisition of Foreign Legal Persons in Turkey

Article 35 of the Land Registry Law states:

“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 private laws.”(Paragraph 2)

“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.”(Paragraph 4)

Clearly put, this means that:

- i. Foreign companies having legal personality established in foreign countries according to the laws of these countries may only acquire real estate in Turkey in accordance with the provisions of private laws. The private laws regulating the acquisition of real estate by foreign companies are;
 - ✚ Petroleum Law numbered 6326,
 - ✚ The Tourism Incentive Law numbered 2634,
 - ✚ Industry Regions Law numbered 4737.
- ii. As is seen clearly in Article 35, funds, associations, organizations, cooperatives cannot acquire real estate within Turkey in any manner.
- iii. The aforementioned reciprocity principle is also valid for the acquisition of real estates by foreign legal persons.

C. Legal Restrictive Provisions

The Land Registry Law states that the acquisition of real estates by foreign real and legal persons in Turkey must comply with the restrictive provisions in Turkish Law concerning real estate acquisition by foreigners.

- i. According to the Military Forbidden Zones and Security Zones Law numbered 2565, which geographically restricts real estate acquisition by foreigners in Turkey, it is not possible to sell,

transfer or rent real estate located within Military Forbidden Zones and Security Zones, to foreign real and legal persons.

- ii. Another provision is again Article 35 of the Land Registry Law. According to this article, foreign real persons can not acquire more than 2, 5 hectares (25.000 m²) of real estate in Turkey; however with a ruling by the Council of Ministers, the acquisition of up to thirty hectares (300.000 m²) is possible. Legal inheritance is an exception for this restriction.⁴

D. Real Estate Acquisition of Foreign Investment Companies

It should be noted that foreign investment companies incorporated in Turkey are not subject to any of the aforementioned restrictions in Turkish Law. According to the Foreign Direct Investment Law numbered 4875 and dated June 5, 2003, foreign investors are subject to equal treatment with Turkish investors, and because of that, foreign investment companies that are established in Turkey are not considered as foreign companies, but regarded as Turkish companies.

Foreign Direct Investment Law numbered 4875 was adopted to encourage and increase foreign direct investments, to protect rights of foreign investors, and to transform the permission and ratification system into an informative system. Due to the this Law, companies having legal personality which foreign investors participate in or establish in Turkey are allowed to acquire real estate or limited real rights in areas where the acquisition of these rights is allowed for Turkish Citizens.⁵

Procedure of Real Estate Acquisition of Foreign Persons in Turkey

A. Authority of Applications

The duty and authorization to arrange the official sales contracts was given to the Land Registry Offices by the Law. Foreigners who want to acquire real estate or benefit from real rights must make their applications to the Land Registry Office where the real estate is located.

B. Required documents

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

i. The following are necessary for Real Persons:

- a. The title deed of the real estate if available. Otherwise, a document indicating the city blocks and parcel of the real estate or a verbal statement by the owner.
- b. The identity card or passport of the foreigner and two small photographs.
- c. If the person applying for demand of registration is a representative, a power of attorney of the representative, an identity card and two small photographs of the representative are required. If some of the purchasers are not present during the transaction, an identity card, two small photographs and a power of attorney for each representative that represents a purchaser are required.

ii. **The following are necessary for Legal Persons:**

- a. Companies established according to the Foreign Direct Investment Law numbered 4875 must show a competence document (“yetki belgesi”) obtained from the Turkish Trade Registry.
- 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 a competence document given by relevant authorities.
- c. Signature Circular of the Company
- d. If a person will be authorized except the legal representatives of the company Power of Attorney is required.

With regard to charges and taxes required to be paid in the course of transactions, there is no difference between foreign persons and citizens of the Republic of Turkey.

However, when asking the competent military post to determine whether the real estate demanded by foreign real or legal persons is located outside of Military Forbidden Zones and Security Zones or not, if any control in the field is needed to mark on a map of 1/25000 scale where the real estate is, a kind of service value will be paid as a transaction named “showing the parcel in its place.”⁶

3. Legal Costs

Real property transactions usually involve the following costs;

The Land Registry Fee is 1.5%. This charge is paid by both the buyer and seller. Thus, the total title deed charge over the property that has to be paid is 3%.

The Notary Public Fee is not required for real property acquisitions.

The Legal Consultancy Cost is usually calculated on the basis of hourly rates by International Law Firms while lawyers prepare a legal due diligence relating to the real property and prepare the sale purchase agreement.

IV. Tax System

In Turkey according to the current tax regulations, foreign citizens and Turkish citizens are no different in terms of taxes or levies to be charged. In Turkey, for the real estates, the following taxes or compulsory insurances are required; Inheritance and succession tax, VAT (if a commercial delivery takes place), Real estate tax, Personal income tax (based on rental income and capital gains), Real Estate Acquisition and Purchase Levy (at the time of purchase or sale), Stamp Duty, Environmental tax, Corporate tax (in case of a commercial transaction of a company), Earthquake insurance.⁷

The Tax Liabilities Concerning Real Estate

Type of Tax	Tax Rates	Event Occurs Tax Liability	Explanations
Real Estate Tax	0.1%	Sale of a Residential building	Real estate Tax is accrued in accordance with the official sale value of the property.
	0.2%	Sale of Non-Residential Building	
	0.3%	Sale of Land	Annual taxes are paid in two equal installments.
	0.1%	Sale of Fields	
Sale & Acquisition Levy	1.5%	Each buyer and seller is to pay sale & acquisition levy.	It is collected prior to the transfer of ownership at Land Registry Office.
Inheritance Tax	1%	First Assessment with amount of 140.000 NTL	Taxpayer is the person who acquires property in inheritance or gratis.
	3%	Next Assessment with amount of 300.000 NTL	
	5%	Next Assessment with amount of 640.000 NTL	
	7%	Next Assessment with amount of 1.290.000 NTL	
	10%	Over the amount of 2.370.000NTL of assessment	
Corporate Income Tax	20%	Sale of real estate owned by Corporate Entities (tax payer)	
Income Tax (Individual)	15%	Incomes not exceeding 7.500 NTL	Fixed tax amount
	20%	Incomes between 7.500-19.000 NTL	1.125 NTL (for the part with amount of 7.500 NTL)
	27%	Incomes between 19.000-43.000 NTL	3.425 NTL (for the part with amount of 19.000NTL)
	35%	Incomes exceeding 43.000 NTL	9.905 NTL(for the part with amount of 43.000 NTL)
Value Added Tax	%1	Sale of Real estate (less than 150m ² residential)	
	%18	Sale of Real estate (residential building over 150m ² , land)	

Footnotes

1. Published in the Official Gazette dated January 7, 2006 and numbered 26046.
2. Land Registry Law numbered 5444.
3. www.tkgm.gov.tr
4. LEVİ, Selim; Yabancıların Taşınmaz Mal Edinmeleri, Mart 2006 İstanbul, Legal Yayıncılık
5. ÇELİKEL, Aysel; Yabancılar Hukuku 11.Bası; Ocak 2004 İstanbul
6. Tapu Kadastro Genel Müdürlüğü Yabancı İşler Dairesi Başkanlığı
7. Law No.213 of January 4, 1961 (in Turkish “Vergi Usul Kanunu”)

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances through decision making progress.