

Property Acquisition: Foreign Real Persons in Turkey - I

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Every nation has its own legislation regarding acquisition of real property by foreign real persons within the scope of its own political, economical and social conditions. Acquisition of real property by foreign real persons in Turkey is restricted by laws in accordance with the national and international laws. Below are the related articles of the Constitution of the Republic of Turkey regarding to acquisition of real property by foreign real persons in Turkey:

Article 12: "Every person has individual, inviolable, inalienable fundamental rights and freedoms."

Article 16: "Fundamental rights and freedoms of foreigners may be restricted by law in accordance with international law."

Article 35: "Everyone has the right to own and inherit property. These rights may be limited by law only in view of public interest. The exercise of the right to own property shall not be in contravention of the public interest."

Before providing the current regulations on the subject, a brief account of the historical development of the rules should be provided. The historical development of the regulations of property acquisition of foreigners in Turkey can be examined as before and after the foundation of Turkish Republic.

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Before the foundation of Turkish Republic

Property acquisition right was recognized to foreigners by a special law (*Uyruk-i Ecnebiyenin Emlake Mutasarrıf Olmaları Hakkında Kanun*) enacted in June 8, 1868. Rights recognized to foreigners by the aforementioned law lasted until the World War I.

Afterwards all the privileges accorded to foreigners were abolished by the law (*Kavanin-i Mevcudedede Uhudu Atikaya Müstenit Ahkâmın Lağvı*) enacted in 1914 under wartime conditions.

After the foundation of Turkish Republic

In accordance with the reciprocity principle, real property acquisition by foreigners was introduced by the Treaty of Lausanne. The historical development of the subject can be examined in four time periods.

a) Between the years of 1934 and 2003

Acquisition of real estate by foreigners was regulated by Articles 35 and 36 of the Land Registry Law No. 2644 of 1934. This period was rather steady with only two arrangements related to reciprocity principle which were annulled by the Constitutional Court in 1985 and 1986. According to the law:

- The right to own and inherit property was recognized for foreign real persons only with the reservation of reciprocity and compliance with national legal restrictions.

- Upper limit of area that a foreigner could acquire was limited to 30 hectares. Acquisition of more than 30 hectares required the permission of the Council of Ministers.

- Foreign real persons could not acquire real property in villages and military zones.

b) Between the years of 2003 and 2005

Article 35 of Land Registry Law No 2644 was amended by Law 4916, which was enacted in 2003. With this amendment, the following were regulated:

- The right to own property was recognized for foreign trading companies established in other countries as well as for foreign real persons

- The reciprocity principle was abolished with regards to real property acquired by means of inheritance.

- Foreigners were allowed to acquire real property in villages.

- The reciprocity principle was not stipulated when establishing *in rem* rights.

- With regard to public interest and security of the State, the Council of Ministers was authorized to determine the places where foreigners could

not acquire real property.

Law No 4916 amending Article 35 of Land Registry Law 2644 was partly annulled by the Constitutional Court in 2005.

c) Between the years of 2006 and 2008

Law No. 5444 came into force on January 7, 2006, and Article 35 of Land Registry Law No 2644 was amended by the new law:

-The upper limit of area that a foreign real person could acquire was limited to 2.5 hectares.

-Foreign real persons could acquire real estate that was registered for residential or business purposes in development plans.

-Companies having legal personality established in foreign countries according to the laws of those countries could acquire real estates and *in rem* rights in Turkey according to the provisions of special laws.

-With the exception of foreign real persons and trading companies established in other countries, no foundations, associations or other similar entities could acquire real property and *in rem* rights.

-*De jure* and *de facto* circumstances were to be taken as basis in the determination of reciprocity. In implementation of this principle for the citizens of countries that did not grant land ownership rights to Turkish citizens, it was stipulated that the rights granted or not granted by that foreign country should also be granted or not granted to, whatever the case, to the citizens in the Republic of Turkey

-The Council of Ministers could determine places where foreign real persons could not acquire real estates and *in rem* rights based on recommendations from public institutions regarding the areas of irrigation, energy, agriculture, mine, protected areas, religious and cultural areas, special protection areas, sensitive areas due to flora and fauna features, strategic areas due to public interest and national security.

- The Council of Ministers was authorized to determine the places where foreign real persons could acquire real estate not more than 5 per cent in any one province.

Law No 5444 amending the Article 35 of Land Registry Law 2644 was partly annulled by the decision of the Constitutional Court in 2007.

d) The period between July 15, 2008 and present

The Law No. 5782 came into force on July 15, 2008 to amend the 7th paragraph of Article 35 of Land Registry Law No. 2644. While preserving the current legal arrangement, the following provisions were introduced:

-The total area of real estate that a foreign real person can acquire shall not exceed the %10 of the area within the borders of development plans in each city.

-The Council of Ministers may determine a different percentage within this limit considering the importance of a city in terms of infrastructure, economy, energy, environment, culture, agriculture and security.

To summarize the current real property acquisition regime for foreign real persons according to Article 35 of Land Registry Law:

- Foreign real persons can acquire real estate in Turkey that are registered for residential or business purposes in development plans with the reservation of reciprocity and compliance with national laws regarding military and special security areas.

According to the Constitutional Court's decision of July 2005, the location of the real property, its type, the reason for purchase and the conditions of transfer of acquisition of real property had to be specified in the Law. Therefore the purpose of an acquisition (residential or business) has been introduced as a new element to the new regulation.

In other words foreign real persons shall acquire real estate that has been specified in development plans and out of the military forbidden zones, security zones and special security zones.

According to the Military Forbidden Zones and Security Zones Law No. 2565, foreigners shall not acquire real property in the areas that are within the scope of the Law. The total area covered by all types of such zones corresponds to less than %0.08 of Turkey's area.

- The total area of the real property that a foreign real person can acquire shall not exceed 2.5 hectares in total for all over the country.

The reason why there is a restriction of 2.5 hectares can be explained by means of statistics; EU nationals (real persons) have acquired a total of 43.056.859 m² and a total of 63.130 pieces of real property in Turkey since 1934. The share of EU nationals' acquisitions in total acquisitions by foreigners is %92. The average square meter per person for EU nationals is 598 m², which considerably lower than the cap of 2.5 ha (25.000 m²) per person.

- There is no restriction on establishing mortgages by foreigners.

- The reciprocity principle is not stipulated in acquisition by means of inheritance. Real estates acquired through legal inheritance by citizens of countries that do not have reciprocity with Republic of Turkey are subjected to liquidation after the transfer of the real property.

- The Council of Ministers can determine places where foreign real persons shall not acquire real estates and *in rem* rights based on recommendations from public institutions regarding the areas of irrigation, energy, agriculture, mine, protected areas, belief and cultural featured areas, special protection areas, sensitive areas due to flora and fauna features, strategic areas due to public interests and national security.

There may be some areas regarded as strategic areas by the public

institutions due to public interest and national security, and Council of Ministers wanted to retain the right of introducing restriction in this issue. This right is not obligatory but optional.

- The total area of the real estate that a foreign real person can acquire shall not exceed the %10 of the areas within the borders of development plans in each city. The Council of Ministers may determine a different percentage within this limit considering the importance of a city in terms of infrastructure, economy, energy, environment, culture, agriculture and security.

Application to acquire real estate

By Article 26 of the Land Registry Law No. 2644, the duty and authorization to regulate contracts concerning real property and in rem rights were given to Land Registry Offices.

Foreigners who want to acquire real property or benefit from in rem rights will make their applications to the Land Registry Office where the real property is located.

Required Documents for Application

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

a. Title deed of the real property 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 photographs.

c. If the person applying is a representative, a power of attorney of the representative, and identity card with photograph, two photographs of the representative, and if some of the purchasers are not present during the transaction, their identity cards with photographs, two photographs and power of attorney of the representatives that represent the purchasers, are required.

Transfer

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