

# Turkey: Practical Information For Acquisition Of Real Estate By Foreigners

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## INTRODUCTION

It has recently been observed that there is a serious increase in the demand and acquisition of real estate by foreigners in Turkey. Naturally, as in every country, there are some restrictions and rules regarding the acquisition of real estate by foreigners. In addition, there are some administrative regulations and procedures for the use of these acquired properties.

This work aims to be used as a guide in order to give general and practical information with respect to the conditions in acquiring real estate in Turkey by foreigners and what key issues one should pay attention to in the acquisition process.

Firstly, the required conditions for real persons and legal entities to acquire real estate are examined, the status of Turkish companies with foreign capital is explained, and the validity of acquisition/obtaining real estate and the issues to be paid attention to in the process are pointed out, respectively.

## A. NECESSARY CONDITIONS FOR ACQUISITION OF REAL ESTATE BY FOREIGNERS

### I. NECESSARY CONDITIONS FOR ACQUISITION OF REAL ESTATE BY FOREIGN REAL PERSONS

The conditions required for acquisition of real estate by foreign real persons are stipulated in Paragraph 1 of Article 35 of the Title Law which is as follows:

*"Provided that there is reciprocity and that the legal restrictions are respected, foreign real persons can acquire real estate in Turkey to use as offices or residence which are registered and reserved for this purpose within the scope of zoning plans. The same conditions are sought for establishing limited real rights."*

As per this Article, it is best to separate the conditions related to the acquisition of real estate by foreign real persons into two categories: *reciprocity* and *respecting the legal restrictions*. Next, it is advantageous to further analyze *respecting the legal restrictions* by dividing it into three subcategories: i) *In terms of quantity*, ii) *In terms of location*, iii) *In terms of purpose*.

#### a) Reciprocity:

Reciprocity in the acquisition of real estate arises when a Turkish citizen is granted the same rights in acquiring real estate in the foreigner's country as the citizen of a foreign country who desires to acquire real estate in Turkey. What is to be understood from reciprocity here, however, is factual reciprocity. As a matter of fact, it is clearly stated in paragraph 6 of Article 35

of the Title Law that factual reciprocity shall be sought as a condition. Accordingly, the laws of the state where the real person, who desires to acquire real estate in Turkey, is a citizen, shall not be able to legally prevent or restrict the acquisition of real estate by Turkish citizens in their state or via administrative acts, court rulings, etc.

On the other hand, there are some exceptions to the reciprocity principle provided under the Title Law:

The first exception is found in the Law on Inducement of Tourism. According to this law, foreign real persons and foreign legal entities shall be excused from the reciprocity principle and from other legal restrictions when they acquire real estate for tourism purposes in touristic regions and centers.

The second exception is for stateless persons who have a particular position in terms of international law and for refugees. Here, reciprocity is not sought in acquisition of real estate by the stateless persons. Concerning the refugees, the "Agreement on the Legal Status of Refugees", drafted in 1951, will be applied which was approved by Turkey in 1961. According to this agreement, the refugees who reside in Turkey for more than 3 years may acquire real estate without seeking the reciprocity principle provided that evidence of residence can be proven by official document.

Another partial exception to the reciprocity principle is the acquisition of real estate through inheritance. Accordingly, if a citizen of a state, which does not meet the reciprocity condition, acquires real estate in Turkey via inheritance then the real estate shall be liquidated and its consideration shall be given to the inheritor. Therefore, acquisition of the property through inheritance does not prevent the inheritor from gaining ownership of the property but it prevents him/her from maintaining ownership.

The circulars shall be taken as the basis for the determination of reciprocity and are published by the Office of the President of the International Affairs Department, a subsidiary of the General Directorate of Land Registry and Cadastre which is a division of the Ministry of Environment and Urbanism of the Turkish Republic (which replaced the Ministry of Public Works and Settlement by the Decree Law no. 644 published on July 4, 2011). However, the Ministry of Public Works and Settlement shall proceed with conducting the duties given to these new and restructured units until the Ministry of Environment and Urbanism completes its organization.

The states which have complete reciprocity are indicated in the annex of these circulars. The Ministry specifies the states which do not have reciprocity as well. An application for a citizen of a state which is not listed in these two lists should be consulted to the Ministry of Environment and Urbanism.

#### **a) Compliance with the Legal Restrictions**

##### **i) In terms of quantity:**

The Law provides a restriction for the amount of real estate that can be acquired by the foreign real persons in terms of quantity. Paragraph 1 of Article 35 states that the acquisition of real estate by foreigners countrywide shall not exceed a total of 2.5 hectares.

It has to be emphasized that these conditions should be considered together with the reciprocity condition. Precedents set forth in the Court of Appeals state that if the laws of the state which the foreign real person is a citizen of have different restrictions for acquisition of real estate by Turkish citizens then the real estate that may be acquired by foreigners from that country in Turkey shall be limited to this same amount.

### **ii) In terms of location:**

Although the Title Law principally allows the acquisition of real estate by foreigners, the restrictions set forth by the provisions of special laws must be taken into account. Hereunder, foreign real persons or legal entities cannot acquire real estate in prohibited military territories and security territories.

It is stated in Paragraph 7 of Article 35 of the Title Law that the area that can be acquired as real estate by foreigners can be limited. The Council of Ministers is to decide on this issue upon the demand of the related institution.

### **iii) In terms of purpose:**

Foreign real persons may acquire real estate in Turkey for the purposes of using it as *offices* or *residences*. Such real estate, however, should be reserved for these purposes according to the zoning plans as well.

## **II. NECESSARY CONDITIONS FOR ACQUISITION OF REAL ESTATE BY FOREIGN LEGAL ENTITIES**

Article 35 of the Title Law regulates the acquisition of real estate by foreign legal entities as well. Firstly, it must be perceived that foreign legal entities are "*commercial companies having legal personality which are established according to the laws of its state*". In other words, commercial partnerships, joint ventures, consortiums, foreign associations and foundations which do not have a legal personality, i.e., cannot acquire real estate in Turkey.

Although it is stated in the Title Law that foreign legal entities can acquire real estate in Turkey, some important restrictions are stipulated as well. As per Paragraph 2 of Article 35 of the Title Law, foreign legal entities can only acquire real estate according to the provisions of special laws. In other words, should there be no special provision in special laws allowing the foreign legal entities to acquire real estate, acquisition of real estate or establishing a limited real right to real estate is impossible.

The special laws with respect to acquisition of real estate by foreign legal entities are as follows:

- Tourism Inducement Law no. 2634
- Petroleum Law no. 6326
- Industrial Territories Law no. 4737

The Circular no. 2008/12 published by Turkish Republic Public Works and Settlement Ministry Land Registry and Cadastre General Directorate International Affairs Department Presidency,

states that the demands of commercial companies having legal entity to be evaluated and concluded by the land registry directorate in the scope of the conformity of the documents that will be obtained from the relevant institutions to the provisions of special laws.

It has to be underlined here that taking into account the needs of business life, the legislator does not seek the above stated conditions for attaching a legal lien in Turkey for the benefit of commercial companies having legal entity which are established abroad according to the laws of its state. Accordingly, if the subject legal entity is a commercial company having a legal personality which is established according to the laws of its state, even if there is no special provision in favor of such company, a legal lien can be attached.

### **III. CONDITIONS SOUGHT FOR ACQUISITION OF REAL ESTATE BY COMPANIES WITH FOREIGN CAPITAL**

The term 'Company with foreign capital' is usually confused with 'foreign companies'. A foreign company means a commercial company established and/or registered abroad according to the laws of the foreign country.

On the other hand, a company with foreign capital is established in Turkey according to the Turkish Commercial Code and registered with the Turkish Trade Registry. In other words, these companies are subject to the laws of the Turkish Republic. Nevertheless, some or all of its capital belongs to foreign real persons or legal entities. The fact that its shareholders are foreign persons, however, does not categorize the company as a foreign legal entity because nationality of the shareholders is a different subject than the nationality of the company.

There is a special regulation on the acquisition of real estate by Turkish companies with foreign capital established in Turkey according to the laws of the Turkish Republic. It is stated in Paragraph 1 of Article 36 of the Title Law that companies with foreign capital can acquire real estate to perform the subject of activity stipulated under their the Articles of Association. Since the Turkish Commercial Code adopts the "*ultra vires*" principle, Turkish companies do not have the capacity to perform actions which do not fall within the scope of the subject of activity provided under their Articles of Association. In this respect, the Title Law does not provide a special provision with regard to companies with foreign capital.

Reserving the provisions of Prohibited Military Territories and Security Territories Law no. 2565, Paragraph 2 of Article 36 stipulates that the acquisition of real estate by these companies with foreign capital in military territories, security territories and strategic territories determined under Article 28 of said law is subject to the permission of the Office of the Commander in Chief or a command to be authorized by the latter. With regard to the acquisition of real estate in special security territories, the acquisition of real estate shall be subject to the permission of the governor's office where the real estate is located.

In effect, if the real estate sought to be acquired by the company with foreign capital is within a strategic territory or special security territory, a permission procedure from the related institution must be sought which is different from the procedures of companies with Turkish capital. If the real estate is not located in the above mentioned strategic territory or special security territory, it is sufficient to obtain an official document from the governor's office where the real estate is located that reflects this fact.

The legislator adopted the same regulation in relation to the attachment of legal lien for the companies with foreign capital, as for foreign real persons and commercial companies having the legal personality established according to the laws of a foreign state. Article 9 of the "Regulation on Acquisition of Real Estate and Establishment of Limited Real Rights By Companies With Foreign Capital", published by the Ministry of Public Works and Settlement, provides that the legal lien can be attached with the Land Registry Directorate for the benefit of a company with foreign capital without any limitations and without any document to be obtained from the governor's office.

## **B. RESTRICTIONS ON THE REAL ESTATE**

The foreigners who desire to acquire real estate in Turkey should also determine the legal status of the real estate. Otherwise, one may risk not taking economic or personal benefit from the real estate as expected. In this respect, the title deed of the real estate must be controlled and it must be determined whether (i) There is any liability on the real estate, (ii) There is any administrative restriction on the real estate for its use.

## **I. LIABILITIES ON THE REAL ESTATE**

The right of ownership provides very broad rights on the enjoyment of a property to its owner. The owner of the real estate uses the property, takes benefit from its fruits and is entitled to dispose of the property. However, the right of ownership may be limited or some restrictions may be attached to the real estate in some cases according to the law or in other cases with the will of the owner.

### **a) Legal Restrictions:**

In some cases, the law sets forth restrictions on the property without the express will of the owner or a legal transaction concluded in this respect. Examples of these restrictions include the right of preemption, vicinity rights, right of compulsory passage or servitude of resource.

Since these rights arise from the law, they are established without any registration procedure. Although these provisions are provided by the law, they are not mandatory provisions and the parties can agree to lift these restrictions by concluding an official deed and registering this official deed with the land registry.

### **b) Voluntary Restrictions:**

The right of ownership grants the owner the ability to dispose of the real estate. In this respect, the owner is at liberty to establish restrictions. It is possible to categorize these restrictions into two groups: i) Those which provide real rights ii) Those which provide contractual rights.

#### **i) Restrictions Which Provide Real Rights:**

Real rights grant direct control of the property to the owner of the right. The owner of these rights can directly use the facilities that the rights provide without the intervention of a third party. The characteristic of these rights is the possibility to claim them against third parties as well. Examples of these rights include usufructuary right, right of residence, servitude or right of pledge.

Establishment of real rights to real estate can be made by registration with the land registry. The registration to the registry has constitutive effect. In other words, the real right is established by registration with the registry and therefore the real right does not exist until the registration is processed. Due to this reason, unlike the legal restrictions, restrictions by real rights are easier to be determined.

One of the most important principles in Turkish property law is the principle of trust in the registry records. According to this principle, a person who acquires a limited real right based on the records of the land registry is protected, even if the records do not reflect the factual status. For example, if a person purchases real estate from a person who appears as the owner of the property according to the records, then he/she acquires the ownership of the real estate even if the other party is not the owner of the real estate and therefore does not have the disposal right. It is sufficient that the person who acquired the real estate bought the property in good faith and was not in the position to be able to know that the records did not reflect the factual status.

Another effect of the land registry is that it negates the good faith claims. Since the land registry is open to the public, it is not possible to allege that an issue recorded in the registry is not known per the clear provisions of the Civil Code. Therefore, it is important for the persons acquiring real estate to examine the records in the land registry to prevent any potential loss of rights.

## **ii) Restrictions Which Provide Contractual Rights:**

The owner of real estate may establish some rights in favor of third parties by contract. According to the principle of relativity of contracts in Turkish law, the agreement gives rise to rights and liabilities solely between the contracting parties but it is possible to claim these contractual rights against third parties when they are registered with the registry. For example, the owner of real estate may grant the use of the property to a lessee for a long period by concluding a lease agreement. If the lease agreement is registered with the land registry, the lessee can claim its contractual right against third parties. In this case, the new owner of the real estate is obliged to launch an eviction action against the lessee in the scope of succession per the lease agreement principle (if the conditions are met) or in the capacity of new owner.

## **II. POSITION OF THE REAL ESTATE IN TERMS OF ZONING LAW**

Another issue to be taken into account when foreign real persons or legal entities acquire real estate is the zoning situation of the property. The restrictions as a result of the zoning situation may prevent obtaining the expected benefits from the real estate. Due to this reason, foreign real persons or legal entities planning to acquire real estate should also seriously take into consideration the zoning status of the real estate apart from the restrictions indicated in Section 1.

If the acquired real estate is a plot, building a structure on the plot would be subject to building permission (license) procedures as per the related regulations. Compliance with zoning regulations is needed in order to obtain building permits. Otherwise, it is not possible to build any structures on the plot. With respect to the acquisition of real estate where the construction is completed, the central issue is whether there is a residential usage license i.e., occupancy permit for the building. If not, one may risk encountering administrative and penal sanctions.

## **C. TRANSACTIONS WHICH GRANT OWNERSHIP OF REAL ESTATE**

## **I. Sales of Real Estate**

The main principle in contract law is liberty of form. Unless otherwise stipulated by law, the validity of a contract is not subject to its form. Nonetheless, the legislator sets forth a condition of form diverging from the liberty of form principle when it comes to the sale of real properties.

According to the Law of Obligations, the sale of real estate is valid only if it is concluded in official written form. As per the Title Law, the contract with respect to the sale of real estate is concluded via land registry officers with the official form.

This condition of form required by the law is a validity condition and the sales of real estate which do not comply with this condition would be invalid. These transactions are regarded as invalid at the time of their conclusion. Therefore, the counterparty does not need to make any declarations to invalidate the transaction. The invalidity can be alleged by everybody.

Foreign real persons and legal entities generally conclude the transactions for acquisition of real estate via their representatives. Although representation capacity is not subject to any form under Turkish law either, there is a specific condition with respect to the sale of real estate. As per Notary Public Law, power of attorney for real estate sales shall be prepared *ex-officio* by the notary public. Due to this reason, it is appropriate to grant the power of attorney through its preparation by the notary public for the purpose that the sale would not be invalidated due to the defects in the power of attorney.

In order for the representative to conclude the sale of real estate, he/she must be specially authorized to do so according to the power of attorney. In other words, the authority granted to the representative must clearly comprise the authorization of the sale of the particular real estate. Otherwise, if the real estate is sold with a general power of attorney, representation without authority would be in question. In this respect, it is accepted that a power of attorney with a wording such as "authorized to sell all kinds of real estate" is invalid. The real estate for which the sale authority is granted should be specified in the power of attorney or at least it should be determinable.

## **II. Promise to Sell Agreement for Real Estate**

A promise to sell agreement for real estate is a pre-agreement giving both parties the right to request the sale. It should be indicated that the rights granted in the promise to sell agreement do not have the same effect of a direct sales contract. The parties must still officially conclude a sales contract in front of the land registry officer.

The legislator sets forth condition of form also for the promise to sell agreement. A promise to sell agreement can be concluded by the land registry officer or by the notary public. The promise to sell agreement contract must be concluded in official form by either the notary public or the land registry officer; in other words, sole authentication of signature before the official authorities would be inadequate. Condition of form is, as in sales contracts, an item of validity and therefore a promise to sell agreement which is not in compliance with the condition of form would be invalid.

If one of the contracting parties refrains from concluding the agreement following the exercise of the right arisen from the promise to sell agreement, the right holder cannot directly demand registration of the real estate in his/her name based on the promise to sell contract. However,

he may apply to the court in which case the court would establish the sales contract if the necessary conditions exist upon request which could be registered ultimately.

In conclusion, foreign real persons or legal entities and foreign-capitalized Turkish companies are capable of acquiring real estate in Turkey under some circumstances. However, before acquiring real estate, factual and legal situation of the real estate, the zoning status, whether there is any restriction in the land registry records, whether there is any occupancy permit should be researched regarding the property; the conditions of form set forth under the law should be respected; and, if necessary, a legal assistance must be sought in this respect.