



Real Estate in Turkey: Still Cumbersome, but Still Valuable

Despite the fact that it has been over two years since the Land Registry Law No. 2644 (the "**Land Registry Law**") was amended to re-regulate foreigners' acquisition of real property in Turkey, the matter never cooled down. After the issuance of the much criticized Regulation on Real Property Acquisitions of Foreign Capital Companies, published in the Official Gazette on 12 November 2008 (the "**Former Regulation**"), the Ministry of Public Works and Settlement very recently issued a new regulation on foreign capital companies' acquisitions of real property in Turkey.

The Land Registry Law prohibits foreign companies incorporated and resident abroad, to directly acquire real property in Turkey. There are only three exceptions to this general prohibition. Accordingly, foreign companies carrying out their businesses within the scope of the (i) Petroleum Law; (ii) Tourism Law; and (iii) Industrial Zones Law may acquire real property in Turkey.

Due to the above-mentioned prohibition, the only way for foreign companies (i.e. those not benefiting from the said exceptions) to acquire real property in Turkey is to establish a subsidiary in Turkey. Even so, a Turkish foreign capital company's direct acquisition of real property is subject to the successful completion of a series of bureaucratic evaluations. The procedure for those evaluations was set forth under the Former Regulation, which has now been abolished and replaced by the new "Regulation on Foreign Capital Companies' Acquisition of Real Property and Limited Rights in Rem", published in the Official Gazette dated 6 October 2010 (the "**New Regulation**").

The New Regulation re-regulates the matter with a more investor-friendly approach, particularly speeding-up the permit process, which tackled most of the foreign investors while closing deals at the time of the Former Regulation.

The Former Regulation had defined foreign capital companies as "*legal entities established by foreigners in Turkey or legal entities with foreign participation*". The New Regulation takes a step forward and provides the following definition: "*foreign investors are those foreign real persons, legal*

entities established in accordance with the laws of foreign companies and international foundations, who establish a new company in Turkey or acquire shares of non-listed companies or at least 10% of the shares (or any amount of shares providing 10% of the voting rights) of listed companies”.

Under the New Regulation, foreign capital Turkish companies are required to apply to the Governorship Provincial Planning and Coordination Directorate where the target real property is located (the “**Commission**”), and submit certain information and documents both regarding the target property as well as the company itself. The Commission communicates the information and documents about the target property with the Provincial Police Department and the Regional Directorate of Military Staff.

Upon positive assessment of each of these governmental authorities, the Commission informs the applicant company and the relevant land registry office that the requested acquisition may be completed. The procedure set forth under the New Regulation is very similar to that under the Former Regulation. However, the New Regulation does not require the Commission to confirm with the relevant Trade Registry as to whether or not the company’s acquisition of the target property is in compliance with the scope of activity stated in the company’s articles of association. Instead, the New Regulation requires the submission of an undertaking letter from a duly authorized representative of the company to that effect.

Apart from a couple of additional new documents required by the New Regulation while making the application, the most notable difference when compared to the Former Regulation is that, upon receipt of the Commission’s correspondence, the Provincial Police Department and/or the Regional Directorate of Military Staff must provide its/their response within 15 days. Otherwise, the Commission will deem that the Provincial Police Department and/or the Regional Directorate of Military Staff have provided affirmative responses. With these new provisions, the New Regulation exerts pressure on relevant authorities to expedite the process. This is particularly important in respect of the Military Staff, which in practice caused months of delay in sending its response regarding an application made in accordance with the Former Regulation.

Another novelty of the New Regulation is that, further to the Commission’s approval of the contemplated acquisition, the registration of the target real property in the name of the applicant foreign capital company must be made before the relevant land registry within three months. Upon expiration of this three-month term, the application must be renewed.

The Regulation further sets forth the procedure to be followed in the event a “foreign investor” participates in a Turkish capital company owning real property. In such cases, the Treasury of the Republic of Turkey will notify the General Directorate of Title Deeds and Cadastre (the “**General Directorate**”) about such transfer or participation. The General Directorate must provide the

respective Commission with the details of the target property owned by the local company or the foreign capital company. The Commission will then communicate with the Provincial Police Department and the Regional Directorate of Military Staff.

If the outcome of the assessment is negative, then liquidation proceedings will be initiated for the property. The Commission will provide the Ministry of Finance with the relevant documents regarding the use of the real property or the real estate transaction contravening the legislation. Upon the Ministry of Finance's notification to the foreign capital company requiring it to sell/transfer the real property or the limited rights *in rem*, the foreign capital Turkish company must initiate liquidation proceedings for such rights within six months. This period may be extended once for another six months, if the foreign company provides a just cause. In the event the foreign capital company does not complete the liquidation process, the Ministry of Finance will complete the liquidation.

The assessment in share deals is in the form of a post-closing action for completion of the acquisition of real property. The share deal itself does not require an approval, unless otherwise required by any other legislation (e.g. transfer of shares of a company in the energy sector may require the approval of the Energy Market Regulatory Authority ("**EMRA**")).

The first provisional article of the New Regulation states that all pending applications will be re-evaluated in accordance with the provisions of the New Regulation. As a result, the newly required documents will need to be submitted for these pending applications as well. According to verbal discussions with officials of the Istanbul Governorship, if an approval of the Commission was obtained more than three months ago and registration with the land registry has not yet been finalized, the approval will be deemed void and a new application, filed in accordance with the New Regulation, must be submitted to the Commission.

The second provisional article of the New Regulation states that all previous real property acquisitions of foreign capital companies will be evaluated by the Commission, in order to determine whether or not such acquired real properties were used by the companies in accordance with their scope of activities defined in their articles of association.

The New Regulation also sets out the rules for Turkish foreign capital companies' acquisition of limited rights *in rem* (e.g., servitude rights, easement rights). A Turkish foreign capital company must undergo a process similar to that that applicable to acquiring the property itself, but with fewer documents while making an application to the Commission.

Although mortgages are also considered as limited rights *in rem*, the New Regulation does not require an application to the Commission. Instead, an application to the relevant land registry is required. The New Regulation states that the General Directorate will determine the procedure to be followed

and documents to be requested for a mortgage establishment clearance. As of the date of this article, the General Directorate has not yet issued a circular regarding the matter. We will be posting an update on the matter as soon as such circular is published.

In this context, it is also worth noting that foreign companies incorporated and resident abroad may establish pledges over real properties in Turkey, without being subject to any restrictions or approval process.

Foreign natural persons may acquire real property and limited rights *in rem* in Turkey, subject to several certain terms and conditions mentioned under the Land Registry Law. A foreign person may acquire real properties located within the borders of a zoning plan and provided that the target property is acquired for commercial or residential use. The other conditions listed under the Land Registry Law are as follows:

- There must be *de facto* (based on practice) and *de jure* (based on an agreement) reciprocity between Turkey and the country of the citizenship of the foreign natural person.
- The applicable legal restrictions must be complied with.
- Each foreign natural person is entitled to purchase a maximum of 2.5 hectares of real property or limited rights *in rem* within Turkey.
- Foreign natural persons are entitled to acquire real property and limited rights *in rem* up to 10% (in aggregate) of the surface area of the total parcels of land within the boundaries of central districts and outlying districts.

Foreign natural persons are required to apply to the respective land registry where the target property is registered, to obtain a clearance for concluding the transfer of title of the target property or establish rights *in rem*. On the other hand, there are no restrictions or approval processes applicable to foreign natural persons for establishment of pledges over real properties in Turkey.

The Turkish economy has gained considerable energy and endurance, especially in the last five years, despite the negative impact of the global crisis. On the other hand, Istanbul has particularly become one of the most attractive European cities for the real estate sector within the past couple of years. Many foreign and domestic investors have realized their projects in Istanbul, and several commercial and residential projects are expected to be realized in the near future. Istanbul may also be considered as one of the best places for hotel investors. With the completion of the "Convention Valley" near Taksim and several other convention centers, the demand for five star hotels has increased dramatically.

In sum, the real estate sector is expected to stay hot for the upcoming years, not only for Istanbul, but all over the nation. It is clear that foreign capital will play a significant role in developing the real

estate requirements of Turkey, in spite of all the cumbersome procedures brought by the Land Registry Law and the relevant legislation. The process may run slow, but our experience so far shows us that the investment light almost always turns to green in the end.

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