

AMENDMENTS MADE TO THE TURKISH LAND REGISTRY LAW

The Law, no. 6302, has entered into enforcement through announcement in the Official Gazette dated 18.05.2012, no. 28196. The aforementioned law changed Article 35 and Article 36 of the Land Register Law. Contents of the new articles after the amendments may be summarized as follows:

1- LAND REGISTER LAW ARTICLE 35:

New version of Article 35 of the Land Register Law is as follows:

“ARTICLE 35 – Foreign national real persons, the countries of whom shall be determined by Ministerial Cabinet, when required for the country’s benefits and in accordance with the international bilateral relations, may acquire immovable and limited right in rem, provided that all legal restrictions are complied. Total area of immovable and independent and continuous limited right in rem acquired by foreign national real persons can not exceed ten percent of surface area of the province that such special property is located in and for each person it can not exceed thirty hectares throughout the country. Ministerial Cabinet is authorized to increase the amount, which may be acquired per person, up to twofold.

Commercial companies, which are incorporated in foreign countries in accordance with laws of their origin countries and which possess legal entity characters, may acquire immovable and limited right in rem only within the frames of provisions of special statutes. The companies, other than these commercial companies, can not acquire immovable and no limited right in rem can be established in their favor. Restrictions set under this article shall not apply to establishment of immovable pledges in favor of these commercial companies and foreign national real persons.

When required for the benefits and interests of the country, the Ministerial Cabinet may determine, limit, partially or fully cease or prohibit immovable and limited right in rem acquisitions of foreign national real persons and commercial companies, which are incorporated in foreign countries in accordance with laws of their origin countries and which possess legal entity characters, in terms of country, person, geographical region, duration, number, ratio, kind, qualification, square measure and amount.

Foreign national real persons and commercial companies, which are incorporated in foreign countries in accordance with laws of their origin countries and which possess legal entity characters, are obligated to submit a project, which they shall develop on any unstructured immovable they purchased, to the approval of the related Ministry. The project, which is approved by the Ministry by determining the start and ending dates, shall be submitted to the Directorate of Land Registry, where the related immovable is registered, in order to register such under the declarations column of the land register. The necessary follow up whether the approved project is performed within its period or not shall be made by the Ministry. Maps and coordinate values of prohibited military zones, military security zones and strategic zones shall be submitted at the latest within one year from the enforcement date of this Law and maps and coordinate values of amendment decisions regarding such places

shall be submitted at the latest within one month from the date of amendment by the Ministry of Defense and maps and coordinate values of special security zones and amendment decisions shall be submitted by the Ministry of Internal Affairs, within the same period, to the Ministry that the General Directorate of Land Registry and Cadastral is affiliated with. Title deed transactions shall be performed according to documents and information sent in pursuant to this sub-paragraph from one year as of the enforcement date of this Law.

The immovable and limited right in rem, which are acquired in violation to provisions of this article, which are determined in use against its acquirement purpose by the related Ministry and administrations, which are not notified to the related Ministry within time or the projects of which are not performed within the stated time and which are acquired by inheritance other than the restrictions within the scope of first subparagraph of this article, are not liquidated by their owners within the period specified by the Ministry of Finance, which can not exceed one year under no circumstances, shall be liquidated and their value and worth shall be paid to their beneficiaries.”

- Reciprocity principle has been abolished. Nationals of countries specified by the Ministerial Cabinet may acquire immovable and limited right in rem. Ministerial Cabinet shall base its decisions on international bilateral relations and the country’s interests while determining the aforesaid countries.
- Upper limit of immovable, independent and continuous rights that foreign real persons may acquire, which was 2.5 hectares according to the previous regulations, has been raised to 30 hectares and it has been regulated that the Ministerial Cabinet may raise this amount up to twofold.
- Legal entity commercial companies incorporated in foreign countries (foreign legal entities other than the legal entity commercial companies, such as foundations, institutions, communities, unions, can not acquire immovable and limited right in rem in Turkey) may acquire immovable and limited right in rem in Turkey within the scope of provisions of special statutes.
- No restrictions have been brought regarding immovable pledges. Mortgages shall be freely established in favor of foreign real persons and foreign legal entity commercial companies, regardless of whether they are within the list specified by the Ministerial Cabinet or not.
- Ministerial Cabinet has been granted with the authority to determine, restrict, partially or fully cease or prohibit the immovable and limited right in rem acquisitions of foreign real persons and foreign legal entity commercial companies.
- Foreign real persons and legal entity commercial companies may purchase lands and areas, whether they are classified as agricultural lands or not. In case these immovable are purchased, a project shall be developed and submitted to the related Ministry. If the Ministry approves these projects by specifying its starting and ending dates, this circumstance shall be registered under the declarations column of land deed register which the concerned

immovable is registered with. The immovable, which are not notified to the related Ministry or projects of which are not performed within it specified period, shall be liquidated.

- When the Article is reviewed, it is observed that an obligation of notifying for military areas and special security zones has been brought. This shall be registered under the page of the related immovable's land deed register following the notification of the related authority in this respect. According to the Law, in case there is such a registration under the land deed register with regards to military areas and special security zones, the aforementioned registries shall be taken as a basis in land deed transactions.
- While the registries regarding military areas and special security zones shall be kept up to date, transaction requests of foreign real persons shall be declined in case there are registries in land deed registers and shall be performed in case there are no registries. This implementation shall start within 1 year as of the enforcement date of the Law.
- In cases of illegal acquisition, utilization in violation of intended use, failure of notification within time, failure of performing projects within time and in cases of immovable and limited real right in rem acquisitions by inheritance other than the restrictions determined under the Law, immovable and limited right in rem shall be liquidated by the Ministry, if they are not liquidated within the period specified by the Ministry of Finance (at most 1 year).
- Immovable may be acquired by inheritance within the scope of restrictions set under the Law. Accordingly, foreigners may acquire immovable properties by inheritance within prohibited military zones and security zones, strategic areas and special security zones, however, these properties shall be subject to liquidation. Furthermore, nationals of countries apart from the countries specified by the Ministerial Cabinet may acquire immovable by inheritance, however, these properties shall also be subject to liquidation. Additionally, immovable acquired by inheritance, which exceed 30 hectares, shall be subject to liquidation. Legal inheritance or testamentary dispositions (testament, inheritance contract etc.) have not been separately regulated under the Law. Both types of acquisitions shall be subject to restrictions.
- Descent transactions shall be performed in directorates of land registry in accordance with documents of inheritance submitted with descent requests of foreigners and acquisitions within the scope of legal restrictions (such as military zones etc.) shall be submitted to the Ministry of Finance for liquidation.

2- LAND REGISTER LAW ARTICLE 36:

New version of Article 36 of the Land Register Law is as follows:

“ARTICLE 36 – Foreign national real persons, excluding persons within the scope of Article 28 of Turkish Citizenship Law dated 29.05.2009, no. 5901, legal entities incorporated in accordance with legislations of foreign countries and legal entity companies incorporated in Turkey, fifty percent or more shares of which are possessed by international institutions, or the assigning and releasing rights of the majority of the persons with management rights for which are granted to international institutions, may acquire and use immovable

property or limited right in rem in order to conduct the operations set under their articles of associations.

Same principles shall be valid in case the companies specified under the first subparagraph directly or indirectly participate in other companies established in Turkey and in case final partnership ratio of the foreign investor in the established company is fifty percent or above, in case foreign investors, directly or indirectly acquire fifty percent or more shares of domestic capital companies, which own immovable properties, and in case partnership ratio of foreign investors in existing foreign capital companies, which own immovable properties, reach fifty percent or exceed this amount as a result of share transfers.

Immovable acquisitions of these companies within prohibited military zones, military security zones and regions specified under Article 28 of Prohibited Military Zones and Security Zones Code dated 18.12.1981, no. 2565, are subject to the approval of Turkish General Staff or of commandships authorized by the Turkish General Staff, while immovable of acquisitions of the aforesaid companies within special security zones are subject to the approval of the governorship of the province that such immovable is located in.

Foreign capital companies outside the scope of the abovementioned subparagraphs may acquire and utilize immovable property and limited right in rem within the frames of provisions domestic capital companies are subject to.

Provisions of this Article shall not be applied to immovable pledge establishments, property acquisitions within the scope of foreclosure of immovable pledges, immovable property and limited right in rem transfers arising from company mergers and demergers, to immovable property and limited real rights acquisitions within special investment zones, such as organized industrial zones, industrial zones, technology development areas and free zones, to immovable acquisitions of banks due to transactions, which are deemed as credits and loans within the scope of Banking Law dated 19.10.2005, no. 5411, or in order to collect their receivables, provided that obligation of disposal within specified time pursuant to related legislations continues.

Utilization of immovable acquired within the scope of this article shall be followed by governorships at regular intervals within the scope of land records.

In case immovable and limited right in rem, which are determined to be acquired or utilized in violation of provisions of this article, are not liquidated by their owners within the period specified by the Ministry of Finance, they shall be liquidated and their value and worth shall be paid to their beneficiaries.

Procedures and principles regarding the implementation of this article shall be regulated with a directive issued by the Ministry of Economy after obtaining views and thoughts of related institutions and organizations.”

- Foreign national real persons, excluding the persons within the scope of Article 28 of the Turkish Citizenship Act, no. 5901, legal entities incorporated under laws and regulations of foreign countries, and legal entity companies incorporated in Turkey, fifty percent or

more shares of which are possessed by international institutions, or even though the aforesaid share ratio of which is not possessed by international institutions, the assigning and releasing rights of the majority of the persons with management rights for which are granted to international institutions, may acquire and use immovable property or limited right in rem in order to conduct the operations set under their articles of associations.

- Due to important regulations brought with this Law, in order for foreign capital companies to acquire immovable and limited real rights within Turkey, share ratio of the investors shall be 50% or higher. In case investors do not possess this ratio, they shall possess the authority to appoint or release the majority of the persons with management rights. If they possess less than this ratio, these companies may acquire immovable and limited real rights same as domestic capital companies.

- Foreign persons and institutions, who may be shareholders of legal entity companies established in Turkey within the scope of the code, are as follows:

a) Foreign national real persons.

b) Legal entities, which are incorporated in accordance with regulations of foreign countries.

c) International institutions.

Abovementioned companies are foreign capital companies which are subject to Foreign Direct Investment Code, no. 4875. According to Article 12 of the Land Register Law, they shall therefore submit an authorization certificate to the Directorates of Land Registry during title deed proceedings. Items requested under the law (Share ratio etc.) should be found within this document and it should also be stated that the company is subject to the Foreign Direct Investment Code.

2-1. In case foreign capital companies, which are subject to Foreign Direct Investments Code, directly or indirectly, participate in another company established in Turkey, Aforesaid companies may acquire and utilize immovable and limited right in rem within Turkey in order to conduct the operations set under their articles of associations in case;

1) Partnership ratio of foreign investor(s) within the participated company is fifty percent or higher,

2) Foreign investors, directly or indirectly, acquire fifty percent shares of domestic capital companies, which possess immovable properties,

3) Partnership ratios of foreign investors in existing foreign capital companies, which possess immovable properties, reach fifty percent or exceed this amount as a result of share transfers.

2-2. Immovable and limited right in rem acquisition within military zones and special security zones,

There is an obligation in the Law for obtaining permission of a commissioned military authority for military zones and of Governorships for special security zones. It may be stated that this permission applies for immovable and continues independent rights acquisitions and it is considered that there is no requirement for obtaining permissions regarding limited right in rem (such as usufruct and easement rights etc.).

2-3. Transactions that the Law shall not apply to,

1) Establishments of pledges,

2) Property acquisitions through foreclosure of pledges within the scope of debt enforcement proceeding performed by mortgage beneficiaries,

3) Immovable property and limited right in rem transfers arising from company mergers and demergers,

4) Immovable property and limited right in rem acquisitions within special investment zones such as organized industrial zones, industry zones, technology development zones and free zones,

5) Immovable acquisitions of banks due to transactions, which are deemed as credits and loans within the scope of Banking Law dated 19.10.2005, no. 5411, or in order to collect their receivables, provided that obligation of disposal within specified time pursuant to related legislations continues.

2-4. Liquidation,

In case immovable and limited right in rem, which are determined to be acquired or utilized in violation of provisions of this article, are not liquidated by their owners within the period specified by the Ministry of Finance, they shall be liquidated and their value and worth shall be paid to their beneficiaries.

Foreign capital companies, which fall outside the scope of restrictions specified under the Law (i.e. Shareholding below 50% etc.) may perform transactions at land registries same as the Turkish companies perform. In order to determine this circumstances, it is required to have share ratios and other matters requested by the Law (management etc.) written in the authorization certificate of such companies.

Source: ISPAT Prime Ministry Investment Support and Promotion Agency of Turkey