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Buying and Selling Real Estate in Turkey

**ILN REAL ESTATE GROUP**



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## KEY FACTS OF REAL ESTATE ACQUISITIONS UNDER TURKISH LAW

### 1. Agreement Types

Pursuant to Turkish laws, a real estate sale and purchase agreement shall be in an official form and the transfer of ownership of real estate is only possible with an official deed and registry, which is signed at the Land Registry Directorates.

It is also possible to sign a real estate sale commitment agreement that sets forth the conditions of the sale before a notary public. It is advisable to annotate this agreement to the relevant land registry records to assert personal rights arising from this agreement to third parties. In case the real estate has been acquired by third parties, a lawsuit for the nullification of title deed can be filed. However, if the sale is not effectuated within five years of the annotation, the annotation will be automatically removed by the Land Registry Directorates pursuant to the Land Registry Law.

### 2. Buyer's Inspection

Due diligence at the Land Registry Directorates shall be carried out to determine if there are any encumbrances and limitations on the real estate, such as mortgages, attachments, rights in rem, lease annotation or any obstacle preventing the purpose of the sale. It is advisable for the buyer to inspect that the property tax for the real estate has been paid and the real estate has been constructed in compliance with the zoning plan.

### 3. Financial Obligations

The transfer and acquisition of real estate may give rise to title deed fees, annotation fees, stamp tax, notary fees, value added tax, income tax and corporate tax.

#### a. Title deed fee

The title deed fee is 4% of the purchase price and shall be paid equally by the seller and buyer. It is revised annually by the Ministry of Finance.

#### b. Stamp tax and notary fee

In case a real estate sale commitment agreement is signed before a notary public, a stamp tax of 0,948% and a notary fee of 0,113% of the purchase price shall be applied. Unless otherwise agreed by the parties, the buyer and seller shall be jointly liable for the payment of the stamp tax and notary fee.

The annotation fee is 0,683% of the purchase price and shall be paid in case of annotation of a real estate sale commitment agreement to the land registry records.

The rates are revised annually by the Ministry of Finance.

#### c. Value added tax

If commercial income is generated from the sale of real estate, the sale transactions shall be subject to VAT. VAT rates for residential real estate vary from 1% to 18% depending on the net area. On the other hand, the sale of commercial real estate shall be subject to VAT of 18%.

In the case that real estate has been owned by companies for at least a two-year period, the sale of such real estate shall be exempt from VAT. However, companies that are engaged in real estate trading business cannot benefit from VAT exemption.

#### d. Income tax and corporate tax

Capital gains generated by individuals from the sale of real estate shall be subject to income tax, which varies from 15% to 35%. However, if the term of holding the title is longer than five years, the sale of such real estate shall be exempt from the income tax.

Capital gains generated by companies shall be subject to the standard corporate tax rate of 20%. However, 75% of capital gains shall be exempt from corporate tax provided that the real estate has been owned by the selling companies for at least two years.

#### 4. Acquisition of Real Estate by Foreign Real Persons and Foreign Commercial Companies

The Land Registry Law regulates real estate acquisitions made by foreign real persons and foreign legal entities.

Foreign real persons are entitled to purchase real estate in Turkey, pursuant to the Land Registry Law. In accordance with Article 35/1 of the Land Registry Law, *“Foreign real persons who are citizens of countries determined by the Council of Ministers pursuant to international relations and the country’s benefits may acquire real estates and rights in rem in Turkey provided that the legal restrictions are to be complied with.”*

Foreign commercial companies, which are established pursuant to the relevant laws of their countries, are entitled to acquire real estate in Turkey only within the provisions of special laws such as the Law on Encouragement of Tourism.

However, according to Article 35/3 of the Land Registry Law, *“In case the country’s benefits necessitate, the Council of Ministers is authorized to determine the acquisition of real estates of foreign real persons and foreign commercial companies which are established pursuant to the relevant laws of their countries in terms of country, person, geographical area, duration, number, proportion, qualification, area meter and quantity; limit, cease entirely or partially or forbid the acquisition.”*

There are legal restrictions for foreign real persons and foreign commercial companies in acquisition of real estate as follows:

- Areal restriction: The total area of the real estate that a foreign real person may purchase cannot exceed 10% of the total area of private real estate within the related district and 30 hectares in total within Turkey.
- Territorial restriction: If the area desired to be purchased is within the borders of a military forbidden zone or military security zone, foreigners cannot acquire such real estate.
- In case the acquired real estate is in land form, foreign real persons and foreign commercial companies should submit the project that will be developed on the unconstructed real estate to the relevant ministries for approval within two years.

The real estate is subject to liquidation provisions in following cases:

- if the real estate is acquired in violation of the laws;
- if the relevant ministries and administrations determine that the real estate is used in violation of purpose of purchase;

- if the foreigners do not apply to the relevant ministry within the required time in case the property is acquired with a project commitment;
- if the projects are not realized within the required time.

In above-mentioned cases, if the liquidation process has not been conducted by the owner within the period given by the Ministry of Finance, which shall not exceed one year, the liquidation shall be carried out by the ministry and the amount acquired as a result of the liquidation shall be submitted to the holder of right.

### **5. Acquisition of Real Estate by Foreign Invested Turkish Companies**

Foreign-invested Turkish companies as defined below are entitled to acquire ownership of real estate in Turkey only if such acquisitions shall be in relation to scope of activities stipulated in their articles of association:

- If 50% or more shares are owned by foreign real persons, companies incorporated in accordance with the laws of foreign countries, or international institutions; or
- If foreign real persons, companies incorporated in accordance with the laws of foreign countries, or international institutions have right to assign or depose most of the persons having the management rights in that company established under Turkish laws.

However, acquisition of real estate in a military forbidden zone or military security zone or a strategic zone is subject to the approval of the commanderships. The acquisition is also subject to the

governorate's approval, if the real estate is in a special security zone.

The companies with foreign capital outside the scope of above-mentioned companies are entitled to acquire real estate in Turkey with equal treatment to local investors.

It should be noted that if companies have real estate in Turkey and the shareholding structures have changed and the companies fall within the scope of the foreign invested Turkish companies as explained above; the companies shall notify such change to the Ministry of Economy within one month following the transfer of shares.

The governorate checks whether the companies use the real estate in accordance with their field of activity stated in their articles of association. If the governorate determines that the companies do not comply with such use, a period of six months will be given to the companies to provide the compliance with the regulation. In case of failure by the companies, the real estate shall be liquidated.

### **6. Necessary Documents for Application**

The owners of the real estate or authorized representatives shall make an application to the relevant land registry directorates. Necessary documents for the application are as follows:

- Title deed of the real estate or detailed information about the real estate.
- Identification document or passport together with its translation.
- Property value statement document to be provided from the relevant municipality.
- Compulsory earthquake insurance policy.
- Photos of the seller and the buyer.



- If the power of attorney is prepared abroad, the original power of attorney and its certified translation.
- Signature circular of companies.
- Certified of authority of companies to acquire and sell real estates issued by relevant registry.

In addition to above given documents, buyers with foreign nationality shall also obtain potential tax numbers from Turkish tax offices.

#### **7. Annual Cost for Ownership of Real Estate**

The owners of real estate shall pay a real estate tax that varies from 0.1% to 0.6% of the tax-based market value determined by the relevant municipality and shall take out a mandatory earthquake insurance policy.