

Sales of Real Estates in Turkey

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This Article examines the legal situation of Sales of Real Estates to Foreigners in Turkey. The recent changes in Turkish legislation in regard with real estate had been also taken into account. One of the influence of globalization to nation states is concerning with sales of real estates sale to foreign entities. In this article, you can find the story of EU candidate Turkey and Europe in relation with sales of real estates.

Sale of Real Estates In Turkey in Relation to Globalization 1. Introduction Real estate has historically been viewed as a local phenomenon. Builders and investors for decades prided themselves in their ability to find the best "location, location, location" based on their local knowledge. It is among the least "tradable" of products, in the sense of being physically unmovable, even though it can be bought and sold both domestically and internationally. This combination of local knowledge and predominantly local tradability was the primary reason why discussions of globalization in the 1990s and earlier overlooked the real estate industry as a possible participant in the ongoing phenomenon of increasing global economic integration. Although an occasional headline would be grabbed by a foreign purchase of a local landmark the business itself remained largely local.

In the last decade, however, globalization has increasingly involved the internationalization of services sectors as much as of manufacturing, and the various sub-sectors of the real estate industry have been enthusiastic participants in this global surge. Builders, brokerage firms, consulting and services firms, real estate finance firms and investors have extended their area of operations beyond local markets to a worldwide base. Several factors have led to this transformation of the industry. Technological changes have extended the geographic reach and weakened the nexus between "local" and "location." The opening up of formerly closed economies in the developing world has provided significant opportunities for real estate firms across the globe.

In the early 21st Century the rules and principles of international trade and investment require states to provide additional domestic legal frameworks, though the pressures sometimes sit uneasily with local constitutional constraints and legal traditions. There have long been national restrictions on the sale of land to foreigner entities; ground leases may be permitted in such countries. Such restrictions are often associated with "closed societies" or developing countries. For example, Singapore has for many years restricted the sale of land to foreign individuals while perhaps permitting the sale of its scarce land residential purposes to foreign companies that wish to make house available for their expatriates, China has long restricted the sale of lands to foreign entities; ground leases may be available to foreigners.

The Countries of the middle east, which are sometimes called 'close societies' partly due to the dominance of the Muslim religion, usually do not permit the sale of lands to foreign entities, individual, company, for any purpose. If a foreigner developer wishes purchase land in Bahrain or Saudi Arabia, for example questions about land sales restrictions should be asked far in advance of any location decision making. Generally the Middle Eastern governments encourage foreign partnership or joint ventures with local property and business owners. Usually, government wishes the local partners to own the majority interest in the partnership, while the foreign entity contributes the majority of the funds and controls the business while holding only a minority interest in the company and no ownership of the real property.

A Brief Legal Overview of Land Acquisition In Turkey Land Registry A land registry (Tapu Sicili) has been established for the purpose of evidencing the transfer of possession and ownership of real property as well as rights such as mortgages. Such registry is also essential to the security of ownership in real property in that it permits the establishment of clear title as a matter of record. Some of important principles regulate land registration can be found below:

1) No real right in immovable property may be acquired without registration of such right. If land is bought, this fact must be registered in the land registry, otherwise the formal owner will remain the legal owner and may resell the land to a bona fide purchaser who will take the title.

2) All person having a convincing interest may inspect the land registry.

Acquisition of immovable property

Generally, transfer of title to real property is valid only if recorded in the land registry either by way of entry or by a cancellation of an existing entry. Such registration is the equivalent of the transfer of possession of personal property by delivery. In order to register a property there should be an agreement between the parties, which, if it is to be valid, is made before the land registration officer. If the parties are not able to present at that office personally, they may authorize another person by a notarial deed to represent them.

3) Sales of Real Estate In Turkey Traditionally Western Europeans have bought property mainly in European-Mediterranean countries such as Spain , France , Italy and Cyprus as well as famous US destinations like Florida . However, these places have recently become extremely expensive and saturated. Nowadays, the European citizens have been seeking other alternative destinations. Turkey is on one of the fastest growing global emerging markets. It's prospective European Union membership has opened the floodgates of foreigners interested in buying property in Turkey. The increase in Turkey's political and economic stability is likely to add the multitude of world travelers that flock to the country's pristine beaches and rich ancient cultural sites.

Turkey's impending EU membership provides growth potential that will certainly boost the prices of real estate there in the future. Buying property now can lead to gains as property prices there continue to increase. The property prices in Turkey are significantly lower than other European destinations and still at value prices. Taxes are comparatively low in the country, as well. Property investment experts Amber lamb rated Turkey's property sector as one of the top five expected European market performers in capital terms of capital

appreciation in 2007. Both residential and vacation properties are available and profitable purchases for foreign nationals in Turkey.

Additionally, housing availability trails demand in the country. Since Turkish parliament ratified a law in January 2006 allowing foreign nationals to purchase property, foreign nationals are afforded the same property ownership rights as Turkish citizens. The reciprocity clause also must be met for foreign nationals to purchase property in Turkey. The clause states citizens of countries whose governments allow Turkish nationals to purchase real estate in their country are allowed to purchase real estate in Turkey. Most Western countries meet this standard. Also, there are no restrictions on selling and reselling, so recently bought property can quickly be sold.⁸ The Turkish property market is emerging rapidly and offers the investor a variety of possibilities to maximize gains on property investments. Property prices in Turkey are dependent upon where the property is located, the type of material used in construction and the property's architectural elements. Other value-determining aspects include how easy it is to reach the property, its proximity to an airport, the region's economic activities and availability of nearby services.

4) EU As A Global Power and Its Impact Over The Recent Members As Regards To Sale Of Real Estates

A) Candidate State's Position In Reaction To Liberalization On Sale of Real Estates In The Process Of EU Enlargement

Before the accession of new countries to EU, in Eastern Europe and in the Mediterranean Area, some countries were agreeing to liberalize land sales to foreigners, others were requesting transition rules for foreign purchase of their land as they all seek entrance into the European Union. The EU favored liberalization of the foreign land sale regulations of prospective Eastern European countries as a part of the requirements for EU membership. Here are some examples of the requests from individual Eastern European and Mediterranean Countries to the European Union.

Poland negotiated for an 18-year ban on farm building land sales to foreigners and a 6 –year ban on land purchase for industrial purposes following the country's approved membership in the EU. Poland hoped to be an EU member by the end of 2002. The transition periods would have run from the date of the membership admission. Foreigners had to apply for permission to purchase property in Poland. Since Poland had taken over a big part of prewar Germany, the Polish government was fearful that the German land would have been brought back without a land purchase ban. Land in Germany was approximately 10 times more expensive than Poland. The Polish government expected the land prices of Germany and near convergence by the end of proposed ban. The Czech Republic was expected to approach the EU with the same negotiating strategy as that of Poland, a very restrictive transitional plan for sales of Czech Land to foreigners.

Estonia, which is one of the Baltic countries split away from Russia, and Slovenia, which was then northernmost state of the previous Yugoslavia and borders the Adriatic Sea across from Italy, both had agreed to fully liberalize land sales to foreigners. Since Estonia still had strong associations with Russia, its government actually had some anxiety over future land purchase by Russian entities. Slovenia wished to develop independence from its old Yugoslavian ties and not wanted to encourage Slovenian Land sales to Serbian and old Yugoslavian entities.¹¹ Cyprus which is located in the Mediterranean Sea off the southeast of Turkey, was negotiating for a transition agreement on the sales of houses to foreigners.

B) Judicial Process Concerning Liberalization Of Sale Of Real Estate In The Course Of EU Enlargement

The central basis of the relationship between the EU and the Central Eastern European candidate countries in the pre-accession period has lain in the Association Agreements or so-called Europe Agreements. These agreements established an association between EU and individual countries, and aimed to help the countries to achieve their goal of EU membership. It's initially designed by the Commission as an alternative to accession, The European Agreements gradually evolved towards the main vehicle for accession.

In the Europe Agreements Romania, Bulgaria, Latvia, the EC has excluded legal acts concerning real estate in frontier regions. By comparison, by Romania, Bulgaria and Lithuania had more areas excluded in their EAs. Romania has done so in relation to the purchase, ownership and sale of land, forestry and residential buildings not related to foreign investments, cultural and historic monuments and buildings, the organization of gambling, betting, lotteries and similar activities, and legal services (apart from advisory services) whereas Bulgaria has done so only in relation to the acquisition of land and dwellings (except where construction rights have been performed) and the ownership of real estate in certain regions. Lithuania has excluded the acquisition of land, mineral deposits and natural resources, and the organizations of gambling, betting, lotteries and similar activities. Latvia and Estonia had not excluded any sectors at all. Finally, Slovenia has excluded EC companies and nationals from organization of gambling, betting, lotteries and similar activities as well as from dealing and agency activities in relation to historical monuments and natural reserves, whereas the EC has not excluded any sector at all.

During the negotiations for the 2004 accession candidate countries requested the possibility to maintain existing national provisions restricting the acquisition of agricultural land or forests by foreigners. They considered these derogations necessary in order to protect the socio-economic agricultural structure of the countries from shocks that might arise from the differences in land prices and incomes with the rest of the Union, and to be able to pursue an effective agricultural policy. The derogations were also deemed necessary because of the unfinished process of privatization and restitution of agricultural land to the farmers in some countries. Some candidate countries provided detailed arguments justifying the transitional periods in the framework of the common positions expressed by the European Council during the negotiations.

Seven new member states – the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland and Slovakia were granted transitional periods during which they could maintain existing provisions of their legislation restricting the acquisition of agricultural land or forests, in derogation of the freedom of capital movement enshrined in Art. 56 of the EC Treaty, as detailed in Annexes V, VI, VIII, IX, X, XII and XIV of the Act of Accession of 2003. In that context, a midterm review of the transitional measures was stipulated, to determine whether the transitional periods should be shortened or terminated.

C) Legal Development in Turkey Under The Impact Of EU And Global Markets

Globalization brings pressure for countries to harmonize unify laws in many areas of business and commerce in order to facilitate international trade and investment.

As an EU candidate country, Turkey is required to adapt the *acquis communautaire* into its legislation. During negotiation process with EU, Turkey enacted many laws and amended many provisions in accordance to the EU harmonization process. In this sense, the principle of free movement of capital is one of the essential principle which EU is based on. The full liberalization of capital movements in the EU was agreed in 1988 (Directive 88/361/EEC) and came into effect in 1990 for most Member States, while for the rest specific transitional periods were agreed.¹⁸ Therefore, as other member countries Turkey was obliged to remove restrictions affecting foreign direct investments originating from the EU. For this purpose, Turkey amended the article 35 of Land Registry Law within the regulation of the acquisition of real estate in the country by foreigners within the framework of EU principles.

The principles governing purchase of property by foreign (i.e. non-Turkish) nationals in Turkey is governed by the 1934 Property Act (Law Nr. 2644 dated 22 November 1934). The legal framework setup in 1934 was modified for a first time by a by-law (Law Nr. 4916) dated 3 July 2003. This law was predicated on a reciprocity clause; that is to say, citizens of countries whose governments allow Turkish nationals to purchase real estate in their country, were to be allowed to purchase real estate in Turkey.²⁰

However, following steps taken by Turkey's main opposition party CHP, the modifications brought by the 2003 by-law were declared as void by the Turkish Constitutional Court on 26 April 2005, in a decision to enter into effect as of 27 July 2005 and the purchase of real estate by foreign nationals was suspended until a modified law dated 7 January 2006 was brought into effect. Constitutional Court annulled some parts of the provision due to its unlimited sale character. The court has decided not to strike out sections E and F, but annulled Section D, which reads as follows: "Companies may freely acquire real estate or limited rights in rem through a legal entity established or participated in by foreign investors in Turkey, provided that such acquisitions are permitted for Turkish citizens." (Rights in rem, distinguished from rights in personam, refer to those property rights acquired by owners either by first possession or by grant from a previous owner.) This section means that as foreign legal persons, companies with Foreign Direct Investment capital, registered under the Turkish Commercial Code, can acquire real estate under the principle of national treatment.

A new Law Nr. 5444, now enacted, instead of being a by-law modifying various paragraphs of the 1934 Land Registry Law, is a fully stated legal text (still on the basis of a modification of the 1934 Act). This current law is retrospective in its application to 26 July 2005 and is largely the same as the law of 3 July 2003, with notable amendments, especially with regards to size limitations. The total area of the real estates and limited real rights on real estates that a real person of foreign nationality can acquire all over the country can't exceed 25.000 square meters (6,17 acres). Within the same conditions set out in this paragraph, the Council of Ministers is authorized to increase the area up to 30 hectares (74,13 acres).²² Concerning article was explicitly laid down the sale of real estates as stating "With the reservation of reciprocity and compliance with legal restrictions, foreign real person can acquire real estates for the purposes of using as residence or business aims in Turkey that are separated and registered for these purposes in the implemented development plans or localized development plans. The same conditions shall be stipulated in the establishment of limited real rights on real estates.

D) Analysis Of Legal Situation

In the light of such information, it can be said that there is an apparent controversy between the government which is under the pressure of global markets and the constitutional court which devotes itself to protect interests of the nation

state. It is necessary to say foreign ownership of real estate has been controversial for historical reasons dating back to the Ottoman Empire as well as for ideological reasons. But considering EU accession process, in the future this type of arguments will apparently intensify the struggle between the protectionists and EU supporting business class. 5. Turkish Foreign Direct Investment Law numbered 4875

In line with this idea, the "Foreign Direct Investment Law No. 4875" ("FDI Law"), which emphasizes the opening of the investment environment in Turkey, was enacted. This law was enacted with a view to eliminate a variety of problems relating to the foreign investors concerned about their ownership rights in host countries and to the worries of host countries' public with regard to the probable decrease in employment and loss of independence and ineffectiveness of the former existing Foreign Investment Promotion Law No. 6224 (the "Old Law"). The FDI Law also appropriately deals with foreign investors' rights by current international standards. The main objective of the FDI Law is to reduce the bureaucratic barriers that foreign investors face when doing business in Turkey. The FDI Law reflects Turkey's liberal approach to international investments and makes FDI easier to implement than the Old Law.

It should be noted that foreign investment companies incorporated in Turkey are not subject the aforementioned restrictions in Turkish Law. According to the Foreign Direct Investment Law numbered 4875 and dated June 5, 2003, foreign investors are subject to equal treatment with Turkish investors, and because of that, foreign investment companies that are established in Turkey are not considered as foreign companies, but regarded as Turkish companies. Due to this Law, companies having legal personality which foreign investors participate in or establish in Turkey are allowed to acquire real estate or limited real rights in areas where the acquisition of these rights is allowed for Turkish Citizens.²⁴ The main opposition party CHP brought the dispute to the Constitutional Court asserting that reciprocity character of the provision is lacking.

The Constitutional Court has resolved with its decision dated 11.03.2008 and numbered E. 2003/71, K. (decision) 2008/79 to annul the provision set forth in subparagraph (d) of article 3 of the Foreign Direct Investment Law numbered 4875 which regulates acquisition of real estate by foreign investors through companies that possess legal personality which they establish or participate in Turkey, which reads as follows: "Companies that possess legal personality and are incorporated or participated in by foreign investors in Turkey may freely acquire real estate or restricted rights in rem in the regions that are open to acquisition by Turkish citizens" and in order to prevent creating a legal loophole, it has decided to have the mentioned decision to become effective six months after its publication in the Official Gazette.²⁵ The annulment decision of the Constitutional Court was published in the Official Gazette numbered 26849 on 16.04.2008 and it has become effective on 16.10.2008. However, as a result of the mentioned annulment of the Constitutional Court, in order not to cause any uncertainty, the Turkish Grand National Assembly adopted Law numbered 5782 Regarding Amendment of the Land Registry Law on 03.07.2008 and Article 2 of the Law numbered 5782 has amended Article 36 of the Land Registry Law numbered 2644, in a manner that would enable acquisition of real estate by the companies incorporated or participated in by the foreign investors in Turkey.

The Law numbered 5782, which enables the mentioned change, has been published in the Official Gazette on 15.07.2008, and in accordance with article 4 of the same Law, became effective with its publication in the Official Gazette. Therefore, with the Law numbered 5782 becoming effective, the concerns regarding the acquisition of real estate in our country by the companies incorporated or participated in by foreign investors in Turkey have been removed. However, even if the Law numbered 5782 which provides for this change was not in effect, companies possessing legal personality and are incorporated or participated in by foreign investors in Turkey could have continued to acquire real estate as there are no provisions preventing or prohibiting acquisition of real estate by these companies.

Before the new regulation, there was an impression that acquisition of real estate by the companies possessing legal personality and are incorporated or participated in by foreign investors in Turkey would be prevented after 16.10.2008, due to the annulment decision of the Constitutional Court. However, annulment of only subparagraph (d) of article 3 would not be sufficient to prevent acquisition of real estate by the companies possessing legal personality and are incorporated or participated in by foreign investors in Turkey. To the effect that, within the context of the Foreign Direct Investment Law numbered 4875, companies that are incorporated or participated in by the foreign investors are companies that are subject to Turkish laws. This matter is explicitly stated in article 9 of the Regulation for Implementation of Foreign Direct Investment Law. According to article 9 of the Regulation, the companies, which can be incorporated or participant.