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Subject:

THE LAW REGARDING THE AMENDMENT OF THE TITLE LAND REGISTRY LAW IN RESPECT OF ACQUISITION OF REAL PROPERTY IN TURKEY BY FOREIGN NATURAL PERSONS, FOREIGN ENTITIES, INTERNATIONAL INSTITIONS, FOREIGN LEGAL PERSONS AND FOREIGN OWNED COMPANIES IN TURKEY HAS BEEN PUBLISHED.

Law No. 6302, which was published in the Official Gazette No. 28296 dated 18.05.2012, has amended Land Registry Law No. 2644 regarding real property acquisition in Turkey by foreign natural persons and companies and Property Law No. 3402.

Article 35 of Land Registry Law No. 2644 dated 22/12/1934 has been amended as follows:

Text of law before the amendment:

Amended text of law:

Article 35 - Foreign natural persons are entitled to acquire real property for use as their workplace or residence in Turkey provided that this is reciprocal; that they comply with legal restrictions and that such real property has been allocated and registered for use as a workplace or residence within the implementation zoning plan or the localised zoning plan. The same conditions shall apply to the establishment of limited rights in rem. The total surface area of real property and independent and continuous limited rights in rem that can be acquired by a foreign natural person across the country may not exceed two and a half hectares.

Companies, which have a legal personality and which have been duly incorporated abroad in accordance with foreign country laws, may acquire real property in Turkey and limited rights in rem thereon within the framework of special law provisions.

The conditions and restrictions set out in the first and second paragraphs do not apply to the establishment of property pledge in Turkey in favour of foreign natural persons and companies with legal entity duly incorporated abroad in accordance with foreign country laws. **Article 35** – When necessitated by international bilateral relations and Turkey's benefits, foreign natural persons who are citizens of the countries that are determined by the Council of Ministers may acquire real property and limited rights in rem in Turkey provided that the legal restrictions are complied with. The total area of the real property and the dependent and continuous limited rights in rem acquired by foreign natural persons may not exceed ten percent of the district which is subject to private ownership; this total area may not exceed thirty hectares per person across the country. The Council of Ministers shall have the authority to increase up to twofold the per person area of real property that may be acquired in the country.

Companies, which have a legal personality and which have been incorporated abroad in accordance with foreign country laws, may acquire real property and limited rights in rem only within the framework of special law provisions. Those other than such companies may not acquire real property or establish limited rights in rem in their favour. The restrictions set out in this Article shall not apply to the establishment of real property pledge in favour of such companies and foreign natural persons.



Those other than foreign natural persons and companies, which have a legal personality and which have been duly incorporated abroad in accordance with foreign country laws, may not acquire real property in Turkey and/or limited rights in rem thereon.

For the real property that is acquired through legal inheritance by citizens of a country that have reciprocity with the Republic of Turkey, the conditions and restrictions set out in the first paragraph shall not apply. The conditions and restrictions set out in the above paragraphs shall apply to other forms of death-related real property acquisition. Real property and limited rights in rem thereon acquired through legal inheritance by citizens of countries that do not have reciprocity with the Republic of Turkey shall be liquidated after their transfer transactions are performed.

De jure and de facto circumstances shall be taken as basis in the determination of reciprocity. In the application of this principle on the citizens of countries which have not granted land ownership rights, it has been stipulated that the rights granted by a foreign country for real estate acquisition to its own citizens should also be granted to citizens of the Republic of Turkey.

On submission of a proposal by the relevant public agencies and institutions which include coordinated maps and plans for registry, the Council of Ministers shall be authorised to determine the places where foreign natural persons and companies, which have a legal personality and which have been duly incorporated abroad in accordance with foreign country laws, may not acquire real property and limited rights in rem thereon for public interest and state security purposes in areas which require protection due to their irrigational, energy, agricultural, mining, protection, belief and cultural characteristics; in special protection areas, in sensitive areas which need protection due to their flora and fauna characteristics and in strategically important areas. Foreign natural may acquire real property persons independent and continuous limited rights in rem up to ten percent of the total area which remains within the borders of the application zoning plan

When so necessitated by the country's interests, the Council of Ministers may define in terms of country, persons, geographical region, term, number, percentage, type, property, surface area and amount; or limit, partially or fully cease or prohibit real property and limited right in rem acquisition by foreign natural persons and companies with legal entity duly incorporated abroad in accordance with foreign country laws.

Foreign natural persons and companies, which have a legal personality and which have been duly incorporated abroad in accordance with foreign country laws, must submit to the relevant Ministry for approval the project they will develop on the unstructured real property they have purchased within two years from the purchase. The project, which is approved by the relevant Ministry after the commencement and end dates are set, shall be sent to the land registry directorate where the real property is registered, for registration in the declarations column on the land register. Whether the approved project has been completed within the time agreed or not shall be monitored by the Ministry concerned.

The Ministry of National Defence shall report within one year at the latest from the date of entry into force of this Law to the Ministry with which the General Directorate of Land Registry and Cadastre is associated the map and coordinate values belonging to forbidden military zones, military security zones and strategic zones; the map and coordinate values belonging the change decisions regarding those zones shall be reported within one month from the date on which the changes have been made; the map and coordinate values belonging to private security zones and any change decisions regarding those zones must be reported to the same by the Ministry of Internal Affairs before the end of the same period. The land registry transactions shall be carried out in accordance with the documents and information to be sent in accordance with this subparagraph one year from the date of entry into force of this Law.

Any real property or limited right in rem which has been acquired in violation of the provisions of this Article or has been identified by the relevant Ministry and administrations to be used



and the localised zoning plan by central district and district. The Council of Ministers shall be authorised to set a different percentage, depending on the infrastructure, economy, energy, environment, culture, agriculture and security measures taken by the central district and other districts, provided that such percentage does not exceed the above-stated percentage.

outside its acquisition purpose; for which an application to the Ministry has not been made in due time or whose project has not been completed within due time, or which has been acquired through inheritance other than the restrictions set out in paragraph one of this Article shall be liquidated, converted into a value and paid to the right holder if the owner of such real property does not carry out the liquidation within the period which will be defined by the Ministry of Finance and which will not exceed one year.

The proposals public agencies and institutions make within this context are reviewed, evaluated and submitted to the Council of Ministers by a committee, which is formed within the Ministry with which the General Directorate of Land Registry and Cadastre is associated, and which consists of the representatives of administration concerned: this committee carries out studies within the powers assigned to the Council of Ministers in accordance with this Article. The changes in the total surface area of the areas within the borders of the application zoning plans and the localised zoning plans of the central district and other districts are reported to the committee by Governorships before the end of January following the year in which such changes took place.

The Ministry of National Defence shall report without delay to the Ministry with which the General Directorate of Land Registry and Cadastre is associated the map and coordinate values for the forbidden military zones, strategic zones and change decisions. The map and coordinate values that belong to private security areas and change decisions shall be reported to the same by the Ministry of Internal Affairs.

The notification by the relevant administrations regarding the parcels which need to be expropriated because they are located in the areas that are specified in the paragraphs above or which need annotation in the land registry for the same reason are made to the land registry directorates.

Any real property or limited right in rem that is identified to have been acquired in violation of the provisions of this Article or is identified to be





used outside its purpose for reasons other than legal necessity shall be liquidated, converted into a value and paid to the right holder if the owner of such real property does not carry out the liquidation within the period to be defined by the Ministry of Finance.

Article 36 of Law No. 2644 has been amended as follows:

Text of law before the amendment:

Amended text of law:

Article 36 - Companies with legal entity, which are established or participated by foreign investors in Turkey may acquire or use real property or limited rights in rem in order to carry out their business activities as set forth in their articles of association. The same principle shall apply when any real property which had been acquired in such a manner is transferred to another foreign owned company that is established in Turkey or when the property-owner domestic owned company becomes a foreign owned company by way of share transfer.

Article 36 – Foreign natural persons other than those set out in Article 28 of Turkish Citizenship Law No. 5901 dated 29.05.2009, companies with legal entity duly incorporated abroad in accordance with foreign country laws and companies with legal entity, which have been established in Turkey and fifty percent or more shares of which are owned by international institutions or whose assignment and releasing power for the majority of the individuals with management rights belongs to international institutions, may acquire and use real property or limited rights in rem in order to carry out their business activities as set forth in their articles of association

The provisions of Article 35 shall apply when a foreign owned company that is established in Turkey is liquidated and the company's foreign natural person partners or foreign companies that are established abroad wish to acquire the real property that was owned by it.

Without prejudice to the provisions of Forbidden Military Zones and Security Zones No. 2565 dated 18/12/1981, real property acquisition by these companies in forbidden military zones, security zones and strategic zones defined by Article 28 of the same law shall be subject to the permission of the Chief of General Staff or the commandership to be authorised by the Chief of General Staff; whereas those in special security zones shall be subject to the permission of the governorship where the real property is located. Issues that are subject to the governorship's permission shall be resolved by a commission to be formed with the participation of the

The same principles shall apply if the companies stated in the first paragraph are direct or indirect shareholders of another company established in Turkey and the final shareholding percentage of the foreign investor in the company is fifty percent or more; if the foreign investor directly or indirectly acquire fifty or more of the shares of the domestic owned company owning the real property; and if the shareholding of the foreign investors in existing foreign owned company owning the real property reaches fifty percent or more as a result of the share transfer.

Without prejudice to the provisions of Forbidden Military Zones and Security Zones No. 2565 dated 18/12/1981, real property acquisition by these companies in forbidden military zones, military security zones and the zones defined by Article 28 of the same law shall be subject to the permission of the Chief of General Staff or the commandership to be authorised by the Chief of



representatives of the administration concerned, after the compatibility of real property acquisition with national security and scope of business of the company are evaluated.

Any real property or limited right in rem that is identified to have been acquired in violation of the provisions of this Article or is identified to be used outside its purpose for reasons other than legal necessity shall be liquidated, converted into a value and paid to the right holder.

The principles and procedures regarding the enforcement of this Article shall be regulated by the regulations to be issued by the Undersecretariat of Treasury, Ministry of Internal Affairs, Ministry of Public Works and Settlement and Ministry of National Defence, after the opinions of the relevant ministries are obtained

General Staff; whereas those in special security zones shall be subject to the permission of the governorship where the real property is located. The evaluation to be performed within the context of this paragraph shall be based on the compatibility of the acquisition with national security.

Foreign owned companies outside the scope of the paragraphs above may acquire and use real property and limited rights in rem within the scope of the provisions to which domestic owned companies are subject.

The provisions of this Article shall not apply to real property pledge establishment, property acquisition within the context of foreclosure of real property pledges, real property and limited right in rem transfers arising from company mergers and demergers; to real property and limited real right acquisition realised within special investment zones such as organised industrial zones, industrial zones, technology development areas and free zones; to real property acquisition of banks due to transactions which are deemed loans within the scope of Banking Law No. 5411 dated 19.10.2005, or in order to collect their receivables, provided that the disposal liability within a specified period under related legislation continues.

The use of the real property acquired within the scope of this Article shall be monitored by governorships through land registry records at regular intervals.

Any real property or limited right in rem which is identified to have been acquired or used in violation of the provisions of this Article shall be liquidated, converted into a value and paid to the right holder if the owner of such real property does not carry out the liquidation within the period which will be defined by the Ministry of Finance.





The principles and procedures regarding the enforcement of this Article shall be regulated by the regulations to be issued by the Ministry of Economy, after the opinions of the relevant agencies and institutions are obtained.

Please find below our summary explanation regarding the acquisition of real property or limited rights in rem in Turkey by foreigners:

Foreign natural persons:

The most important novelty introduced with the amendment to Article 35 of Land Registry Law No. 2644 with Article 1 of No. 6302 is that **the reciprocity rule**, which was previously sought for the acquisition of real property or limited rights in rem in Turkey by **foreign natural persons** who are citizens of the countries that are determined by the Council of Ministers, when necessitated by international bilateral relations and Turkey's benefits, **has been lifted,** provided that the legal restrictions are observed. This amendment was long-awaited and ambitiously demanded particularly by real estate companies that operate in the field of housing construction.

The total area of real property and limited rights in rem which can be acquired by foreign natural persons may not exceed ten percent of the surface area of the district for areas subject to private ownership and **may not exceed 30 hectares** (300,00 sqm) **per person** across the country. The Council of Ministers holds to power to double this area of 30 hectares. **Previously**, the total surface area of real property that could be purchased by foreigners **could not exceed 2.5 hectares** (25,000 sqm).

The date of entry into force regarding the explanations made in this section was May 18, 2012.

<u>Companies which have a legal personality and which have been duly incorporated abroad in accordance with foreign country laws:</u>

Companies, which have a legal personality and which have been duly incorporated abroad in accordance with foreign country laws <u>may only acquire</u> real property and limited rights in rem within the framework of special law provisions. Those other then these companies will not be able to acquire real property or establish limited rights in rem in their own favour. The restrictions that are set out in Article 35 will not apply to the establishment to real property pledge establishment in favour of these companies and foreign natural persons.

When so necessitated by our country's interests, the Council of Ministers will have the authority to define in terms of country, persons, geographical region, term, number, percentage, type, property, surface area and amount; or limit, cease or prohibit real property and limited right in rem acquisition by foreign natural persons and companies with legal entity duly incorporated abroad in accordance with foreign country laws.





Foreign natural persons and companies with legal entity duly incorporated abroad in accordance with foreign country laws will submit to the ministry for approval within two years the project they will be developing on the unstructured real property they purchased. The ministry will send the approved project to the land registry directorate where the real property is registered and will monitor whether the project has been completed within its term or not.

The date of entry into force regarding the explanations made in this section was May 18, 2012.

Foreign natural persons, foreign legal entities and international institutions:

In accordance with the amendment made to Article 36 of Land Registry Law No. 2644 with Article 2 of Law No. 6302,

- foreign natural persons,
- foreign legal entities
- international institutions

other than those set out in Article 28 of Turkish Citizenship Law No. 5901, companies with legal entity duly incorporated abroad in accordance with foreign country laws

and companies with legal entity, which have been established in Turkey and **fifty percent or more shares** of which are owned by international institutions <u>or</u> whose assignment and releasing power for the majority of the individuals with management rights belongs to international institutions, may acquire and use real property or limited rights in rem <u>in order</u> to carry out their business activities as set forth in their articles of association.

The same principles shall apply if these companies (those above-described companies in Turkey; 50% or more of the shares of these companies are owned by foreigners or their management rights are held by foreigners) are direct or indirect shareholders of another **company** established in Turkey and the **final shareholding percentage** of the foreign investor in the company is fifty percent or more; if the foreign investor directly or indirectly acquire fifty or more of the shares of the domestic owned company owning the real property; and if the final shareholding of the foreign investors in existing foreign owned company owning the real property reaches fifty percent or more as a result of the share transfer.

Whereas foreign owned companies, which are established in Turkey and <u>have legal</u> <u>personality</u>, less than fifty percent of whose shares are owned by <u>or</u> whose assignment and releasing power for the majority of the individuals with management rights belongs to

- foreign natural persons,
- foreign legal entities and
- international institutions

shall be entitled to acquire and use real property and limited rights in rem within the scope of the provisions to which domestic owned companies are subject. Therefore it is possible for these companies to acquire real property whether such acquisition is relevant to their scope of business or not.





The concepts of "international institutions" and "foreign legal entity" that are introduced here are striking. The principles and procedures regarding the enforcement of the amended Article 36 of the Land Registry Law will be regulated by the Ministry of Economy after the opinion of the relevant agencies and institutions are obtained. Within this framework, we believe that these concepts of "international institutions" and "foreign legal entity" will be clarified.

Individuals who enter the scope of Article 28 of Turkish Citizenship Law No. 5901 are defined as follows in the law in question: "Persons who had been Turkish citizens but birth but have lost their Turkish citizenship through obtaining a renunciation permit and their descendants up to the third degree". Therefore we would like to indicate that these persons may not benefit from the provisions of this law.

Without prejudice to the provisions of Forbidden Military Zones and Security Zones No. 2565 dated 18/12/1981, real property acquisition by **these companies** in

- forbidden military zones,
- military security zones and
- the zones defined by Article 28 of the same law shall be subject to the permission of the Chief of General Staff or the commandership to be authorised by the Chief of General Staff.

Real property acquisition in **special security zones** shall be subject to the permission of the governorship where the real property is located. The evaluation to be performed in this context will be based on the compatibility of the acquisition with national security.

The provisions of this Article shall not apply to real property acquisition by banks due to transactions which are deemed loans or in order to collect their receivables, provided that the disposal liability within a specified period under related legislation continues. The use of real property will be monitored by the Governorships at regular intervals through the land registry records.

Any real property or limited right in rem which is identified to have been acquired or used in violation of the provisions of this Article will be liquidated, converted into a value and paid to the right holder if the owner of such real property does not carry out the liquidation within the period which will be defined by the Ministry of Finance.

The date of entry into force regarding the explanations made in this section will be **August 18, 2012.**

Kind Regards,

DENGE DENETİM YEMİNLİ MALİ MÜŞAVİRLİK A.Ş.

ANNEX:

Law No. 6302





- (*) The information provided in our circular notices is for informing purposes only. We advise that the opinion and support of a specialist advisor be sought before acting on points of hesitation. Our company does not assume any responsibility regarding any loss that may be incurred as a result of any transaction to be carried out based on the explanations made in our circular notice only.
- (**) Please do not hesitate to write to the following experts to let us know about your opinions, criticism and questions regarding our circular notices:

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LAW

LAW ON THE AMENDMENT OF THE LAND REGISTRY AND PROPERTY LAWS

Law No. 6302 Date of Adoption: 3/5/2012

ARTICLE 1 – Article 35 of Land Registry Law No. 2644 dated 22/12/1934 has been changed as follows:

"ARTICLE 35 – When necessitated by international bilateral relations and Turkey's benefits, foreign natural persons who are citizens of the countries that are determined by the Council of Ministers may acquire real property and limited rights in rem in Turkey provided that the legal restrictions are complied with. The total area of the real property and the dependent and continuous limited rights in rem acquired by foreign natural persons may not exceed ten percent of the district which is subject to private ownership; this total area may not exceed thirty hectares per person across the country. The Council of Ministers shall have the authority to increase up to twofold the per person area of property that may be acquired in the country.

Companies, which have a legal personality and which have been incorporated abroad in accordance with foreign country laws, may acquire real property and limited rights in rem only within the framework of special law provisions. Those other than such companies may not acquire real property or establish limited rights in rem in their favour. The restrictions set out in this Article shall not apply to the establishment of real property pledge in favour of such companies and foreign natural persons.

When so necessitated by the country's interests, the Council of Ministers may define in terms of country, persons, geographical region, term, number, percentage, type, property, surface area and amount; or limit, partially or fully cease or prohibit real property and limited right in rem acquisition by foreign natural persons and companies with legal entity duly incorporated abroad in accordance with foreign country laws.

Foreign natural persons and companies, which have a legal personality and which have been duly incorporated abroad in accordance with foreign country laws, must submit to the relevant Ministry for approval the project they will develop on the unstructured real property they have purchased within two years from the purchase. The project, which is approved by the relevant Ministry after the commencement and end dates are set, shall be sent to the land registry directorate where the real property is registered, for registration in the declarations column on the land register. Whether the approved project has been completed within the time agreed or not shall be monitored by the Ministry concerned.

The Ministry of National Defence shall report within one year at the latest from the date of entry into force of this Law to the Ministry with which the General Directorate of Land Registry and Cadastre is associated the map and coordinate values belonging to forbidden military zones, military security zones and strategic zones; the map and coordinate values belonging the change decisions regarding those zones shall be reported within one month from the date on which the changes have been made; the map and coordinate values belonging to private security zones and any change decisions regarding those zones must be reported to the same by the Ministry of Internal Affairs before the end of the same period. The land registry transactions shall be carried out in accordance with the documents and information to be sent in accordance with this subparagraph one year from the date of entry into force of this Law.

Any real property or limited right in rem which has been acquired in violation of the provisions of this Article or has been identified by the relevant Ministry and administrations to be used outside its acquisition purpose; for which an application to the Ministry has not been made in due time or whose project has not been completed within due time, or which has been acquired through inheritance other than the restrictions set out in paragraph one of this Article shall be liquidated, converted into a value and paid to the right holder if the owner of such real property does not carry out the liquidation within the period which will be defined by the Ministry of Finance and which will not exceed one year."

ARTICLE 2 – Article 36 of Law No. 2644 has been amended as follows.

"ARTICLE 36 – Foreign natural persons other than those set out in Article 28 of Turkish Citizenship Law No. 5901 dated 29.05.2009, companies with legal entity duly incorporated abroad in accordance with foreign country laws and companies with legal entity, which have been established in Turkey and fifty percent or more shares of which are owned by international institutions or whose assignment and releasing power for the majority of the individuals with management rights belongs international institutions, may acquire and use real property or limited rights in rem in order to carry out their business activities as set forth in their articles of association.

The same principles shall apply if the companies stated in the first paragraph are direct or indirect shareholders of another company established in Turkey and the final shareholding percentage of the foreign investor in the company is fifty percent or more; if the foreign investor directly or indirectly acquire fifty or more of the shares of the domestic owned company owning the real property; and if the shareholding of the foreign investors in existing foreign owned company owning the real property reaches fifty percent or more as a result of the share transfer.

Without prejudice to the provisions of Forbidden Military Zones and Security Zones No. 2565 dated 18/12/1981, real property acquisition by these companies in forbidden military zones, military security zones and the zones defined by Article 28 of the same law shall be subject to the permission of the Chief of General Staff or the commandership to be authorised by the Chief of General Staff; whereas those in special security zones shall be subject to the permission of the governorship where the real property is located. The evaluation to be performed within the context of this paragraph shall be based on the compatibility of the acquisition with national security.

Foreign owned companies outside the scope of the paragraphs above may acquire and use real property and limited rights in rem within the scope of the provisions to which domestic owned companies are subject.

The provisions of this Article shall not apply to real property pledge establishment, property acquisition within the context of foreclosure of real property pledges, real property and limited right in rem transfers arising from company mergers and demergers; to real property and limited real right acquisition realised within special investment zones such as organised industrial zones, industrial zones, technology development areas and free zones; to real property acquisition of banks due to transactions which are deemed loans within the scope of Banking Law No. 5411 dated 19.10.2005, or in order to collect their receivables, provided that the disposal liability within a specified period under related legislation continues.

The use of the real property acquired within the scope of this Article shall be monitored by governorships through land registry records at regular intervals.

Any real property or limited right in rem which is identified to have been acquired or used in violation of the provisions of this Article shall be liquidated, converted into a value and paid to the right holder if the owner of such real property does not carry out the liquidation within the period which will be defined by the Ministry of Finance.

The principles and procedures regarding the enforcement of this Article shall be regulated by the regulations to be issued by the Ministry of Economy, after the opinions of the relevant agencies and institutions are obtained."

ARTICLE 3 – The following additional article has been added to Law No. 2644.

"ADDITIONAL ARTICLE 1 – The directorate of land registry may resort to the jurisdiction for the issuance of a certificate of inheritance if transfer by inheritance has not taken place within two years from the date of death at the latest. The directorate of land registry registers and updates land registry records as co-ownership. Any application to be made by the directorate of land registry within this power shall be exempt from all expenses, taxes, duties and fees."

ARTICLE 4 – Item (c) of subparagraph (B) of paragraph one of Article 13 of Property Law No. 3402 dated 21/6/1987 has been changed as follows.

"c) If the disappearance of the owner was declared twenty years ago, or if it has not been possible to identify the owner through the land register, shall be determined to be in the name of the individual who has held peaceable possession in the capacity of an owner for an uninterrupted period of twenty years."

ARTICLE 5 – The date of entry into force of

- a) Article 2 of this Law shall enter into force three months after its date of publication,
- b) The other Articles of this Law shall enter into force on the date of its publication.

ARTICLE 6 - The provisions of this Law shall be enforced by the Council of Ministers.

17/5/2012