

CHANGES IN ACQUISITION OF REAL ESTATE BY FOREIGN CAPITAL COMPANIES

Land Registry Law No. 2644¹ (the “Law”) has recently been amended to introduce certain changes to the acquisition of real estate by foreigners.

Pursuant to Article 36 of the Law and Regulation regarding the Acquisition of Real Estate by Foreign Capital Companies² (the “Regulation”), foreign capital Turkish companies are considered as foreign investors and the acquisition of real estate (or for the establishment of rights *in rem* over such estate) by foreign investors within military forbidden zones, military security zones, strategically important zones and special security zones are subject to the permission of the Chief of Staff or the relevant governorate, as the case may be. Under the Regulation, the foreign investors must apply to the relevant governorate to determine whether or not the lands in question are located within such zones before each acquisition (or establishment of a right *in rem*). However, neither the Law nor the Regulation provided any explicit provisions as to the scope of “foreign investor”. Thus, all foreign capital companies established in Turkey, which have direct foreign shareholding were interpreted to be subject to this permitting requirement even if the ratio of the foreign shareholding was insignificantly low.

Article 36 of the Law has been recently amended by Article 2 of Law No. 6302³ (the “Amendment”) to change the scope of the “foreign investor”. Accordingly, this permitting requirement shall apply to companies with direct or indirect foreign shareholding of 50% or more; or to companies in which foreign shareholders are authorized to assign or remove from office the majority of persons in the company management.

Another change brought by the Amendment is that acquisitions of real estate and rights *in rem* stemming from the mortgage on the real estate, the foreclosure of mortgaged property in favor of the mortgagee, mergers and demergers are excluded from the permitting requirement under Article 36.

The provisions summarized above shall enter in force 3 months after the date of its publication in the Official Gazette, i.e. 18 August 2012. A regulation regarding the implementation of Article 36 and the procedures for the clearance and permitting procedure are expected to be issued by the Ministry of Economy.

¹ Published in the Official Gazette No. 2892 dated 29 December 1934.

² Published in the Official Gazette No. 27721 dated 6 October 2010.

³ Published in the Official Gazette No. 28296 dated 18 May 2012.