Turkey: Recent developments in real estate acquisition by foreign nationals

GOKMEN BASPINAR and BURAK GENCOGLU look at the recent developments in real estate acquisition by foreign nationals in Turkey and the how this will affect the Islamic banking sector.

Real estate and limited real rights acquisitions by foreign nationals, either natural persons or legal entities, are regulated by the Land Registry Law No 2644. In this regard the Land Registry Law article 35 and 36 have a great importance for foreign nationals who wish to purchase real estate within the borders of Turkey. The Turkish government has been working on a draft law which will restructure the current articles concerning foreign acquisitions.

As a result of the government's motion, the Turkish parliament enacted the aforementioned draft law on the 3rd May 2012 which makes immovable acquisitions easier for foreign nationals. The previous form of the law restricted foreigners through a reciprocity principle and by the real estate's acreage. Essentially, a foreign national had to be a citizen of a country which should have reciprocity with Turkey while secondly the real estate had to have an acreage of up to 2.5 hectares.

The reciprocity principle's rigid practice caused an obstacle for foreigners and therefore foreign nationals had to find solutions such as establishing companies in Turkey whose only reason for establishment was to purchase a single piece of real estate. These obstacles have caused time and money wastage for both sellers and buyers and additionally discouraged foreign investors intending to invest in the Turkish real estate market.

The law on the amendment of land registry and cadastre law

The law on the Amendment of Land Registry Law and Cadastre Law (the new law) which was enacted on the 3rd May 2012 has changed the Land Registry Law articles 35 and 36. The new law introduced two important changes;

I. The new form of article 35 does not mention the reciprocity principle anymore and grants an authority to the council of ministers to determine the countries whose natural person citizens can purchase real estate in Turkey. In this way the council of ministers will decide on the list of countries whose nationals can acquire immovable properties and limited real rights.

   There will be no need to have a reciprocity between these countries in the list and Turkey; the only important point to be considered is Turkey's national interest which seems to be an easier requirement to be met when compared with the reciprocity principle.

II. The second significant amendment is made on the total acreage of the immovable and limited real rights that a foreign natural person can acquire. As indicated, foreign natural persons could previously only acquire real estate and limited real rights country-wide up to 2.5 hectares. This restriction is changed by the new law and the limitation is increased up to 30 hectares; thus now a foreign person can acquire country-wide real estate or limited real rights of up to 30 hectares. The ministry of environment and urban planning and the ministry of finance may jointly decide to double this acreage limitation; namely they may increase it up to 60 hectares when it is deemed necessary from the point of national interests.

With regards to foreign legal entities the new law - similar to its predecessor - stipulates that only foreign commercial companies, which have a legal personality and established in a foreign country pursuant to the local law of that foreign country, are permitted to purchase immovable and limited real rights in Turkey. Article 36, as amended by the new law, stipulates that in the event a foreign commercial company incorporates or become a shareholder having more than 50% of the total shares or have administration rights in a Turkish incorporated company, then the restrictions in article 36 shall apply on such Turkish companies for their real property and limited real rights acquisitions.

Conclusion

The recent developments on the real estate acquisition by foreign persons are publicly welcomed and they are likely to have a positive impact on the Turkish real estate sector. Since these amendments ease the way to acquire immovable or limited real rights by foreigners it is expected to increase foreign investment, especially from the Gulf countries, and cash inflow into Turkey.

Effect on Islamic banking

In terms of the Islamic finance industry, it is likely that there will be a positive impact on the Turkish participation bank sector after these amendments come into force. Removing the reciprocity requirement and increasing the total purchasable acreage will attract more investors from the Middle East and consequently Islamic instruments are likely to be used for financing such real estate investments in Turkey. It should be noted that investors from all income levels have the opportunity to directly invest in different real estate projects. Therefore, the Turkish participation banks will play an important role in financing such investments from the Middle East.

The new law has been published on the official gazette on the 18th May 2012 and it is enforceable.. We also expect the countries list, which will be prepared jointly by the council of ministers to be published soon and following the publication it will become more of an issue.

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