



# **SCREENING CHAPTER 04 FREE MOVEMENT OF CAPITAL**

**Country Session: The Republic of TURKEY  
22 December 2005**



## **SCREENING CHAPTER 04 FREE MOVEMENT OF CAPITAL**

# **AGENDA ITEM I: FREE MOVEMENT OF CAPITAL AND PAYMENTS**

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## Foreign Exchange Legislation

- This is the main legislation regulating the transfers with regard to capital movements. It covers the performance of transactions in some cases, as well.
- The liberalization of foreign exchange regime was completed to a great extent in 1989 by the enactment of Decree No. 32 on the Protection of the Value of the Turkish Currency.

## Foreign Exchange Legislation (cont.)

### Major restrictions are:

- **Regarding outward direct investment**
  - ✓ **Authorization requirement for capital outflows by a resident above USD 5 million (€ 4.17 million)**
  
- **Regarding physical export of means of payments**
  - ✓ **Physical export of Turkish Lira and foreign currency banknotes is limited to USD 5,000 (€ 4,170) equivalent**



# **DIRECT INVESTMENT -INWARD-**





## **Turkish Foreign Direct Investment Regime comprises of**

- **Foreign Direct Investment Law  
(Law No. 4875 dated 17 June 2003)**
- **By-law for Implementation of FDI Law  
(Official Gazette dated 20 August 2003/25205)**

**Providing a clear definition of the terms “Foreign Direct Investment” and “Foreign Investor”, the Law is a “legal guide ”to international investors about their rights and obligations, with explicit messages.**



## Basic Investor Rights Confirmed by the FDI Law

### ➤ National Treatment

The National Treatment, the major principle of foreign investment policy of Turkey, is emphasized in the Law. Thus “ unless stipulated by international agreements and other special laws, foreign investors are free to make foreign direct investments in Turkey and shall be subject to equal treatment with domestic investors”.



## Basic Investor Rights Confirmed by the FDI Law (cont.)

### ➤ Access to Real Estate

Legal entities with foreign capital, established and registered under rules of Turkish Commercial Code can acquire real estate with the same principles as Turkish nationals.





## Basic Investor Rights Confirmed by The FDI Law (cont.)

- **Protection against Expropriation**
- **Guarantee of Transfers**
- **International Arbitration**
- **Employment of Expatriates**



# **BILATERAL INVESTMENT TREATIES (BITs)**



## BITs

- **Up to now, Turkey signed 74 Agreements on Promotion and Protection of Investments.**
- **Generally, these bilateral agreements contain clauses on treatment of investments and investors, expropriation and compensation, free transfer of profits and returns, subrogation and settlement of disputes.**



## **BITs (cont. )**

- **53 of the Turkey's BITs are with third countries and 36 of these are in force.**
- **Most of these 53 Agreements contain clauses on both "National Treatment" (NT) and "Most Favoured Nation (MFN) Treatment". A typical Turkish BIT with a third country includes MFN Treatment for the pre-entry and post-entry, and NT for post entry phases.**



## BITs (cont.)

- 50 Agreements out of the 53 contain an REIO (Regional Economics International Organisation) clause.
- Only 3 Agreements, those signed with the United States, Japan and Bangladesh, do not contain any.
- A typical Turkish BIT has a REIO clause formulated as follows:

*“The provisions of this Article (Treatment of Investments) shall have no effect in relation to following agreements entered into by either of the Parties.*

*(a) relating to any existing or future customs union, regional economic organization or similar international agreements,*

*(b) relating wholly or mainly to taxation.”*





## SECTORAL PROVISIONS



## Sectoral Provisions

- MARITIME TRANSPORT
- CIVIL AVIATION
- GROUND-HANDLING SERVICES
- ROAD TRANSPORTATION
- RADIO AND TELEVISION BROADCASTING
- ELECTRICITY
- FINANCIAL CORPORATIONS
- PRIVATE EMPLOYMENT OFFICES
- TOURISM
- EDUCATION
- DEFENCE INDUSTRY



## **Maritime Transport**

### **Legal Restrictions For Foreign Investors/ Enterprises**

- **Cabotage Law No. 815 (19 April 1926)**
- **Turkish Commercial Code No. 6762 (29 June 1956)**
- **Turkish International Ship Registry Law No. 4490 (16 December 1999)**



## Maritime Transport (cont.)

### Cabotage Law No. 815

- Turkish flagged ships have the sole right to transport cargo and passengers between ports, engage in pilotage and tugging in and among ports and perform other port services.
- The maritime and marine occupations in Turkey are reserved for Turkish citizens and foreigners shall not engage in these occupations.



## **Maritime Transport (cont.)**

### **Cabotage Law No. 815**

- **The production, processing and trading sea products in Turkish waters and occupations such as rescue, diving, pilotage shall only be performed by Turkish citizens.**
- **The Turkish flagged ships shall be crewed by Turkish citizens.**





## Maritime Transport (cont.)

### Turkish Commercial Code No. 6762

- The ships belonging to Turkish citizens or which Turkish citizens have the majority of the shares are registered to the national ship registry and hold the right to fly the Turkish flag.



## Maritime Transport (cont.)

### Turkish International Ship Registry Law No. 4490

- The ships belonging to foreigners may be registered to the Turkish international ship registry, but the owner of these ships have to be resident in Turkey.
- The ships belonging to foreigners and having no right to be recorded in the National Ship Registry are not entitled to the cabotage rights.
- The Masters shall be Turkish citizen. More than 51% of crew of ships belonging to Turkish citizens shall be Turkish seafarers.



## Civil Aviation

- **Turkish Civil Aviation Law No. 2920 (19 October 2003)**
- **Law on the Organisation and Functions of the Turkish DGCA” No. 5431**



## Civil Aviation (cont.)

### Commercial Air Carriage

- **Article 31 of the Law (cabotage)**
  - ✓ Carriage of passengers, freight and mail between two points within Turkey is provided only by Turkish civil aircrafts
  
- **Article 49 of the Law (Definition of Turkish civil aircrafts)**
  - ✓ Turkish majority in respect of the members of bodies authorised for the administration and representation of the undertaking is required
  - ✓ Main contract has to guarantee majority of the Turkish shareholders' votes



## **Civil Aviation (cont.)**

### **Ground-handling Services**

#### **➤ Article 4(g,h,i) of the Regulation SHY 22 (Definitions)**

**Three types of licenses regulated:**

- ✓ Type A: Licence for suppliers of ground-handling services (mandatory services)**
- ✓ Type B: Self-handling**
- ✓ Type C: Licence for suppliers of ground-handling services (non-mandatory services, e.g. supervision, catering etc.)**





## Civil Aviation (cont.)

### Ground-handling Services

**Article 7(e) of the Regulation (rights and duties of suppliers)**

➤ **In respect of type A and C**

- ✓ **Turkish majority in respect of the members of bodies authorised for the administration and representation of the undertaking is required.**
- ✓ **Main contract has to guarantee majority of the Turkish shareholders' votes.**



## Road Transportation

### Road Transport Law No. 4925 (19 July 2003)

- Any foreign real or legal person who establishes a company according to the Turkish Commercial Code and Foreign Direct Investments Law can provide road transport services.
- Vehicles registered in a foreign country cannot transport goods or passengers between two points within Turkey.



## Road Transportation (cont.)

- **Transport of goods or passengers can be provided to, from and through Turkey only with bilateral or multilateral permits or permits issued by the Council of Ministers.**



## **Radio And Television Broadcasting**

### **Law on the Establishment of Radio and Television Enterprises (Broadcasting Law) No. 3984 (20 April 1994)**

#### **Article 29 (Ownership)**

- **The share of foreign capital in one private radio and television enterprise may not exceed 25 percent of the capital paid up.**
- **A real or legal person of foreign nationality holding shares in a certain radio or television enterprise may not become a shareholder in another private radio or television enterprise.**





## Electricity

### Electricity Market Law No. 4628 dated 20 February 2001

Regarding the privatization of the assets belonging to the Turkish Electricity Distribution Company (TEDAS) and Electricity Generation Co. Inc. (TEAS), their subsidiaries, affiliates, partnerships and operational units and facilities (Article 14 ).

- "The foreign real persons and legal entities engaged in the market activities as defined by this Law within the scope of privatization activities cannot have a market share that will enable them with a control power in the electricity generation, transmission and distribution sectors."





## Financial Corporations

- **Establishment of subsidiaries by non-resident banks, insurance companies and non-bank financial institutions is subject to authorisation.**
- **Banks, insurance companies and non-bank financial institutions, such as leasing, factoring and consumer credit companies can also operate by establishing branches upon authorisation.**



## Financial Corporations (cont.)

- For the first branch of a non-resident bank or an insurance company the minimum capital requirement is the same with that of establishing a bank or an insurance company.
- For each branch of non-resident leasing, factoring and consumer credit companies the minimum capital requirement is the same with that of establishing a subsidiary.



## **Financial Corporations (cont.)**

### **According to Capital Markets Regulations**

- **Non-residents can acquire shares or controlling stakes, exercise voting rights and manage a brokerage house and a portfolio management company under the conditions laid down for nationals.**
- **Non-residents and nationals are not allowed to set up a new brokerage house by the decision of the State Ministry taken in 1991 to limit the number of brokerage houses.**



## Financial Corporations (cont.)

- **Foreign brokerage houses are not allowed to open branches in Turkey.**
- **Foreign banks authorized to engage in banking activities in Turkey are allowed to set up a new brokerage house and this brokerage house can open a branch.**
- **National brokerage houses and portfolio management companies can open a branch abroad by the CMB's approval.**



## Financial Corporations (cont.)

- **Founders of the mutual funds should be banks, insurance companies, brokerage houses, pension funds, etc. Under this limitation, foreign institutions authorized in Turkey can establish mutual funds.**
- **Majority of the members of board of directors of the investment companies must be Turkish citizens.**





## Private Employment Offices

### Law No. 4904 on Turkish Employment Organisation

- Article 17 of the Law stipulates that the persons who have the binding authority to represent , act on behalf of and manage real and legal persons that'll set up a “private employment office” should be Turkish
- This, in turn, implies that a real foreign person cannot establish a private employment office but a foreign company can with the condition that the person who is authorised to represent it in Turkey is Turkish
- In fact, currently there is several private employment offices established by foreign companies in Turkey .

## Tourism

**The Law for the Encouragement of Tourism No. 2634  
(Article 3/e)**

**The Law Concerning Travel Agencies and The Union of  
Travel Agencies No. 1618 (Article 4)**

- **Encourage real or legal persons of foreign nationality for investing, operating and purchasing real estates in the tourism sector.**
- **Commercial ventures jointly or individually established by real or legal persons of Turkish or foreign nationality operate in the tourism sector.**

## Tourism (cont.)

### The Law Concerning Travel Agencies and the Union of Travel Agencies No. 1618

- **Turkish Class (A) travel agencies shall be granted two-year Provisional Operation Certificates. Such provisional certificates shall be converted to permanent Operation Certificates if the said travel agencies manage to obtain foreign Exchange Earnings of not less than USD 80,000 (€ 66,727) through tours they organise from abroad.**
- **This requirement shall be three times as high in the case of non-resident travel agencies operating in Turkey or local branches of foreign travel agencies (Article 4).**



## Tourism (cont.)

### The Law Concerning Travel Agencies and the Union of Travel Agencies No. 1618

- The amount of equity which non-resident travel agencies or their local branches shall be required to obtain from abroad if they are to be issued on Operation Certificate shall be fixed annually by the Ministry of Culture and Tourism, after obtaining the opinion of the Ministry of Finance (Article 4).
- In the case of non-resident travel agencies operating in Turkey or local branches of foreign travel agencies, the amount of security shall be doubled (Article 13).





## Tourism (cont.)

### Law for the Encouragement of Tourism No. 2634

- Real or legal persons may operate marinas subject to the obtaining of the necessary certificate from the Ministry of Culture and Tourism. However, in operations to be established by foreigners, at least one of the shareholders in such undertaking must be a real or legal persons of Turkish nationality (Article 26).
- Principles concerning the use of foreign-flag yachts along the Turkish coasts and between Turkish harbours shall be determined by the Council of Ministers as may be required (Article 27/b).





## Tourism (cont.)

### Law for the Encouragement of Tourism No. 2634

- **Foreign-flag yachts and yachts used by foreign nationals may in regions determined and announced by the Council of Ministers**
  - ✓ **cruise on routes shown in their cruise documents,**
  - ✓ **call and anchor at harbours along the route where there is no customs office, without any restrictions for sight-seeing purposes(Article 28/d).**



## Tourism (cont.)

### Law for the Encouragement of Tourism No. 2634 (cont.)

- **Foreign-flag yachts may stay up to two years in Turkey for maintenance, repair, docking or wintering purposes. This period may be extended in accordance with principles to be determined by the Council of Ministers (Article 29).**



## **Education**

### **Primary, Secondary and Other Educational Services**

#### **Law No. 625 on Private Education Institutions**

- **Foreign real or legal persons may not set up education institutions unless all students thereof are foreigners - International Private Education Institutions- (Article 1).**
- **International Private Education Institutions might be set up by foreign real or legal persons upon authorisation of the Council of Ministers (Article 5).**



## **Education (cont.)**

### **Tertiary Education**

**An indirect restriction arising from the Civil Code and the Legislation on Foundations**

- ✓ **Supplementary 2nd and 3rd articles of the “Law on Higher Education” state that Private Universities can only be established by foundations constituted under the Civil Code.**
- ✓ **Legislation on Foundations, in turn, requires that the majority in the administrative bodies of foundations must be Turkish citizens.**



# PRODUCTION OF DEFENSE EQUIPMENT





- Foundation, operation and supervision of public and private enterprises producing defense equipment and the security of Defense Industry Enterprises are regulated under the Laws (No. 5201 and 5202), which came into force in 2004.
- Ministry of National Defense as the Defense Industry National Security Authority, carries out the tasks in scope of the mentioned law.



- **According to the Law (No.5201);**
- ✓ **Establishment and operating of the enterprises producing defense equipment within the boundaries of the Turkish Republic,**
  - ✓ **Export, import and domestic marketing of materials mentioned in the annual List of Materials Subject to Control,**  
**require the authorization of**  
**the Ministry of National Defense.**



➤ **Entrepreneurs, who will produce a material which falls into the List of Materials Subject to Control, published annually by the Ministry of National Defense, must first obtain an Establishment Permit.**

➤ Procedures to obtain the **Establishment Permit**;

✓ Following the evaluation of the applications, Ministry of National Defense requests the opinions of;

✓ Ministry of Industry and Trade in terms of national industry and trade considerations,

✓ Ministry of Interior in terms of public security requirements,

✓ Turkish General Staff in terms of Military Forbidden Zones and Security Zones.



- The opinions of Ministry of Health and Ministry of Environment and Forestry are requested while evaluating the applications concerning the place of production plants, their storehouses and sales points.
- The Ministry of National Defense, through the opinions of the related ministries, finalizes the decision.





➤ **Public or private enterprises need also to obtain an Operating Permit (Production Permit), which is issued by the Ministry of National Defense, following the opinion of the Ministry of Industry and Trade.**



- Enterprises with a Production Permit have to report to the Ministry of National Defense **in every January**;
  - ✓ Defense equipment that will be produced in-house,
  - ✓ Arms and their related ammunition and spare parts, which will be contracted out to third parties.
  
- Enterprises are also required to report **within a month's time** the type and the size of the orders they receive and the identity of the ordering party.



- Except the production for civilian purposes by the enterprises mentioned in the Law, the acceptance of the orders for defense equipment other than national defense requirements **is subject to the permission of the Ministry of National Defense.**
- The export and transportation of the defense equipment to a foreign country is subject to the permission of the **Ministry of National Defense.**



➤ Reserving the provisions of international agreements concerning the inspections and industrial security, defense equipment production facilities **are inspected** by the Ministry of National Defense for the principles set out in the Law.



# STATISTICAL REQUIREMENTS





## **Statistical Requirements**

**Foreign Direct Investment Law No. 4875**

**dated 17 June 2003**

**By-law for Implementation of FDI Law**

**(Official Gazette 20 August 2003/25205)**

➤ **According to Article 4 of the Law, all companies with foreign capital established in Turkey are to submit “statistical information on their investments” to the General Directorate of Foreign Investment, Undersecretariat of Treasury. The article states that “such information cannot be used as evidence or for any means other than for statistical purposes.”**



## **Statistical Requirements (cont.)**

**According to the Article 5 of the By-law companies and branch offices subject to the provisions of the Law shall submit to the General Directorate of Foreign Investment**

- An annual information form on their capital and operations**
- Information on the payments made to their equity accounts within one month following the payment,**
- Information on share transfers made between current domestic or foreign shareholders or to any domestic or foreign investor outside the company within one month following the realization of the share transfer.**



# **DIRECT INVESTMENT -OUTWARD-**



## Outward Direct Investments

- **Capital outflows by a resident up to USD 5 million (€ 4.17 million) is free**
  - ✓ **Notification requirement by banks and customs**
- **Above this amount authorization is required**
- **The Council of Ministers is entitled to permit State Economic Enterprises to establish new undertakings and participate in new or existing undertakings abroad in accordance with the Decree Law No. 233 on SEEs**



## Outward Direct Investments

- **Banks, insurance and reinsurance companies, brokarage houses and portfolio management companies operating in Turkey are obliged to take permission from the related authority to open a branch in a foreign country.**





# PRIVATISATION



## Major Privatisation Implementations in 2005

- Total Amount of Privatization Implementations in 2005 –both finalized and at approval/contract stage- have exceeded **EUR 21.55 Billion**

<u>Company</u>	<u>Sector</u>	<u>stake sold-off</u>
<u>Turk Telekom (Finalized-FDI)</u>	<u>Telecommunications</u>	<u>55% EUR 5.47 Billion</u>
<u>Galataport (FDI)</u>	<u>Cruiseport Operations</u>	<u>BOT EUR 3.59 Billion</u>
<u>Tupras</u>	<u>Petroleum-Refinery</u>	<u>51% EUR 3.46 Billion</u>
<u>Ataturk Airport (Finalized)</u>	<u>Airport Operations</u>	<u>BOT/TOR (EUR 2.51 Billion)</u>



## Major Privatisation Implementations in 2005 (cont.)

<u>Company</u>	<u>Sector</u>	<u>stake sold-off</u>
<u>Erdemir</u>	<u>Iron-Steel</u>	<u>46.12% + 3.17%</u> <u>EUR 2.47 Billion</u>
<u>Vakifbank</u> <u>(Finalized)</u>	<u>Banking</u>	<u>25.18%-IPO</u> <u>EUR 1.06 Billion</u>
<u>Mersin Port</u>	<u>Seaport Operations</u>	<u>TOR Scheme</u> <u>EUR 630.5 Million</u>
<u>Motor Vehicle</u> <u>Inspection Stations</u>	<u>Services</u>	<u>Concession</u> <u>EUR 512.4 Million</u>



## Major Privatisation Implementations in 2005 (cont.)

<u>Company</u>	<u>Sector</u>	<u>stake sold-off</u>
<u>Tupras (Finalized)</u>	<u>Petroleum-Refinery</u>	<u>14.76% -ISE EUR 379.2 Million</u>
<u>Eti Aluminyum (Finalized)</u>	<u>Bauxite/Aluminium</u>	<u>99.99% EUR 254.7 Million</u>
<u>Petkim (Finalized)</u>	<u>Petro-chemicals</u>	<u>34.5% SPO EUR 228.6 Million</u>
<u>Istanbul Hilton Hotel (Finalized)</u>	<u>Tourism</u>	<u>Asset Sale EUR 213.4 Million</u>



## Major Privatisation Implementations in 2005 (cont.)

<u>Company</u>	<u>Sector</u>	<u>stake sold-off</u>
<u>Atakoy Group of Companies (Finalized-Vakıfbank Shares Included)</u>	<u>Tourism</u>	<u>Various Stakes EUR 166.3 Million</u>
<u>Grand Efes Hotel, İzmir</u>	<u>Tourism</u>	<u>Asset Sale EUR 101.5 Million</u>
<u>Tekel Tobacco /Twin Towers</u>	<u>Real Estate</u>	<u>Asset Sale EUR 83.5 Million</u>
<u>Tekel-Salt Pans (3)</u>	<u>Salt Facilities</u>	<u>EUR 100.4 Million</u>
<u>Iskenderun Port</u>	<u>Seaport Operations</u>	<u>TOR Scheme EUR 66.8 Million</u>





## Major Privatisations on the Pipeline December 2005–2006

<b>BASAK INSURANCE COMPANIES</b>	<b>December 2005</b>
<b>PETKIM (PETROCHEMICALS)</b>	<b>Under progress</b>
<b>TEKEL TOBACCO &amp; TOBACCO PRODUCTS</b>	<b>Under progress</b>
<b>NATIONAL LOTTERY</b>	<b>Under progress</b>
<b>TURKISH AIRLINES</b>	<b>Under progress</b>
<b>TEDAS / ELECTRICITY DISTRIBUTION</b>	<b>Under progress</b>
<b>ELECTRICITY GENERATION</b>	<b>July 2006</b>
<b>IZMIR, SAMSUN, BANDIRMA &amp; DERINCE PORTS</b>	<b>Under progress</b>
<b>SUGAR PROCESSING ENTITIES (34 plants)</b>	<b>Under progress</b>
<b>HALK BANKASI (BANKING)</b>	<b>Strategy to be determined</b>

## Privatisation (cont.)

### TEDAS/ Electricity Distribution and EUAS/ Power Generation

- The privatisation tender process for distribution companies (20) will be initiated in the first half of 2006.
- Main target will be to privatise all distribution companies until 31 December 2006.
- The privatisation process will be commenced by 1 July 2006, for portfolio of power generation companies.

## Privatisation (cont.)

### Banking Sector

- There is no restriction on foreign direct investment in the banking sector. Banking Regulations are applied equally to both domestic and foreign investors.
- In 2005 three separate mergers and acquisitions have been completed in the sector.
- All of the State-owned banks will be completely privatized.
- So far, IPO of 25.18 % of Vakifbank shares was completed.
- In order to determine the privatization strategy of Halkbank the process is underway.



## SPECIAL VOTING RIGHTS





## Special Voting Rights

**“Golden share” application in privatisation implementations has been enforced according to the Privatisation Law No. 4046 dated 27 November 1994 and/or the related law exercised on the privatisation of the company concerned.**

**Hence, there are 3 types of Golden Share application:**

- Companies that are listed in the Privatisation Law explicitly**
- Privatisation High Council (PHC) Decisions via the certain article in the special/sectoral law**





## Special Voting Rights (cont.)

- **Companies that are listed in Privatisation Law explicitly**  
**Privatisation Law No. 4046 (Article 13) lists the certain**  
**companies at which the golden share must be set if the**  
**public ownership falls below 50 per cent.**

**These are:**

- ✓ **Turkish Airlines**
- ✓ **Ziraat Bank**
- ✓ **Halk Bank**
- ✓ **Alkaloid Institution and**
- ✓ **Turkish Petroleum**



## Special Voting Rights (cont.)

### ➤ Privatisation High Council (PHC) Decisions

Privatisation High Council has the right to enforce a “golden share” in a company to be privatised if it decides the company has strategic importance. This authorisation is given by the Privatisation Law No. 4046 (Article 13).

These are:

- ✓ Erdemir
- ✓ TUPRAS
- ✓ Petkim



## Special Voting Rights (cont.)

- **Via an article in the special/sectoral law.**

**In accordance with the Telegram and Telephone Law No. 406 (Supplementary Article 17), the Golden Share has been applied in**

- ✓ **Turk Telekom**



## Special Voting Rights (cont.)

**Golden share application has been enforced in 4 companies' Articles of Association**

### ➤ **Turk Telekom**

### ➤ **ERDEMIR (Eregli Demir ve Celik Fabrikaları T.A.S.)**

- ✓ **Golden share application has been enforced by PHC Decision 2005/51 of 5 May 2005**

### ➤ **TUPRAS (Türkiye Petrol Rafinerileri A.S.)**

- ✓ **Golden share application has been enforced by PHC Decision 2003/39 of 13 June 2003**

### ➤ **PETKIM (Petrokimya Holding A.S.)**

- ✓ **The application has been enforced by High Planning Council Decision 90/13 of 15 May 1990**



## Special Voting Rights (cont.)

- **The proportion of the golden share in all of the four companies is symbolic (i.e. only 1 share).**
- **However, it is compulsory to have the approval of the representative of the golden share in certain issues inserted in the Articles of Association.**





## Special Voting Rights (cont.)

### Turk Telekom

- **For the purpose of protecting the national interest in issues of national security and the economy, the following actions and resolutions cannot be taken without the affirmative vote of the holder of the golden share at either a meeting of the Board of Directors or the General Assembly:**



## Special Voting Rights (cont.)

### Turk Telekom

- ✓ Any proposed amendments to the Articles of Association
- ✓ The transfer of any registered shares in the company which would result in a change in the management control of the company
- ✓ The registration of any transfer of registered shares in the company's shareholders' ledger



## Special Voting Rights (cont.)

### ERDEMIR

**The Golden Share application is used for the following motivations:**

- **To secure enforcement of the commitments of the buyer.**
- **To prevent the liquidation of the Company.**
- **The Government also keeps the veto right on the dissolution, merger, de-merger, disposal of subsidiaries and affiliates, sale of shares.**

## Special Voting Rights (cont.)

### TUPRAS

- As the sole fuel supplier of the Turkish Armed Forces, there are some clauses in the Articles of Association of TUPRAS which **guarantees the fuel need of the army in regard to national security issues**. The approval of the representative of the golden share is a must in the decisions concerning this subject.
- Furthermore, Petroleum Market Law No. 5015 enacted on 4 December 2003 (Article 5), states that “the production and distribution of fuel and other goods needed in respect to national security is prior. Refineries must supply and keep the production capacity of tactical fuels whenever demanded.”





## Special Voting Rights (cont.)

### PETKIM

The approval of the golden share representative is a must in case of;

- **A change in the Articles of Association**
- **Capital increase or decrease**
- **A change in personnel regulations (especially dismissal)**
- **Assignment of independent audit firm**
- **Determination of the wages of high level managers**



## Special Voting Rights (cont.)

### PETKIM

- Proposal of distribution of dividend
- Decisions envisaging at least a 10 per cent change in the capacity of the plant
- Establishment of a new firm or a partnership, merge and/or participation in existing companies and acquisition of company

If the shares held by the Privatisation Administration fall below 1 per cent, Golden Share will no longer be prevailing in accordance with the Articles of Association of the Company.



# ACQUISITION OF REAL ESTATE BY FOREIGNERS



## Acquisition of Real Estate by Foreigners

- **Legal framework**
- **Implementation before the Constitutional Court's Decision**
- **Annulment decision of the Constitutional Court**
- **New draft Law**



## Acquisition of Real Estate by Foreigners

### Legal Framework

#### ➤ Constitution of the Republic of Turkey

- ✓ **Article 12: Every person has individual, inviolable, inalienable fundamental rights and freedoms.**
- ✓ **Article 16: Fundamental rights and freedoms of foreigners may be restricted by law in accordance with international law.**
- ✓ **Article 35: Everyone has the right to own and inherit property. These rights may be limited by law only in view of public interest. The exercise of the right to own property shall not be in contravention of the public interest.**



## Acquisition of Real Estate by Foreigners (cont.)

### Legal Framework

#### ➤ European Human Rights Convention Protocol No. 1

Property rights of foreign persons can be restricted in conformity with general principles of international law.





## **Acquisition of Real Estate by Foreigners (cont.)**

### **Implementation before the Constitutional Court's decision**

**Real estate acquisition of foreigners has been regulated in the Article 35 of the Land Registry Law No. 2644 which was amended in 2003 by the Article 19 of the Law No. 4916.**

**According to this Law:**

- With the reservation of reciprocity and compliance with legal restrictions, foreign real persons and companies established in foreign countries according to the laws of these countries can acquire real estate (including agricultural land) in Turkey.**



## Acquisition of Real Estate by Foreigners (cont.)

### Implementation before the Constitutional Court's decision

- Real estate acquisition of more than 30 hectares by foreign real persons and companies depends on the permission of the Council of Ministers.
- With regard to public interest and state security, the Council of Ministers is authorized to determine where the article will not be implemented.



## Acquisition of Real Estate by Foreigners (cont.)

Legal restrictions are:

- **The Military Forbidden Zones and Security Zones Law No. 2565**
- **Article 35 of the Land Registry Law (the authorization given to the Council of Ministers for acquisition of more than 30 hectares and for determining the places where the Article shall not be implemented)**



## **Acquisition of Real Estate by Foreigners (cont.)**

### **Annulment decision of the Constitutional Court**

- **Article 35 of the Land Registry Law No. 2644 was annulled by the decision of the Constitutional Court on the grounds of not complying with the Constitution.**
- **The annulment decision has come into force on 26 July 2005.**





## Acquisition of Real Estate by Foreigners (cont.)

### Statements of Reasons of the Constitutional Court are:

- Proper procedure of real property acquisition of foreigners has not been pointed out in the Article.
- The place of the real estate, the kind, the reason of purchase and the conditions of transfer of acquisition of real estate must have been specified in the Law.
- In case of registration of limited rights for long period -for being similar with property rights- the aim, the kind and the period of these rights must have been specified clearly in the Article.





## **Acquisition of Real Estate by Foreigners (cont.)**

**Statements of reasons of the Constitutional Court are:**

- Authorization of the Council of Ministers to determine the places where the article will not be implemented causes delegation of power of legislation to the Council of Ministers. Undetermined limits of delegated power of legislation to the Council of Ministers have not complied with the Article 16 of the Constitution.**
- Article 35 of Land Registry Law No 2644 was annulled on the grounds of being contrary to Articles 2, 7 and 16 of the Constitution.**



## Acquisition of Real Estate by Foreigners (cont.)

The annulment decision entered into force on 26 July 2005.

- **New draft law**
- **Demands of new real estate acquisition of foreigners are suspended.**



## Acquisition of Real Estate by Foreigners (cont.)

### Outline of the new draft law:

- **With the reservation of reciprocity and compliance with the legal restrictions foreign real persons can acquire real estate for the purposes of residence and business.**
- **Companies having legal personality established in foreign countries according to the laws of these countries can acquire real estates and limited real rights on real estates in Turkey according to the provisions of special laws.**
- **There is no restriction on establishing mortgage on behalf of foreigners.**



## Acquisition of Real Estate by Foreigners (cont.)

Regime concerning the acquisition of real estate by Foreigners in Turkey:

- linked to foreign direct investment
- linked to movement of workers
- as acquisition for investment purposes
- as acquisition of secondary residences



## Acquisition of Real Estate by Foreigners (cont.)

### Foreign Direct Investment (FDI) Law

- According to the Article 3/d of the FDI Law, companies may freely acquire real estate or limited rights through a legal entity established or participated by foreign investors in Turkey, provided such acquisitions are permitted for Turkish citizens.





## Acquisition of Real Estate by Foreigners (cont.)

### **Movement of workers**

- **Restrictions in respect to real property acquisition of foreigners are not on the basis of residency but on the basis of nationality.**



## Acquisition of Real Estate by Foreigners (cont.)

### Investment purposes

- Law for the Encouragement of Tourism (Law No. 2634)
- Industrial Zones Law (Law No. 4737)
- Petroleum Law (Law No. 6326)



## **Acquisition of Real Estate by Foreigners (cont.) Law for the Encouragement of Tourism (Law No. 2634)**

**The acquisition of immovable in cultural and tourism preservation and development regions and tourism centres may be exempted by the decision of the Council of Ministers, from the restrictions on foreign nationals imposed by Villages Law No. 442 and Real Estate Law No. 2644 (Article 8/e).**



## **Acquisition of Real Estate by Foreigners (cont.) Industrial Zones Law (Law No. 4737-amended by Law No. 5195 on Amendment of Industrial Zones Law No. 2634)**

**With a view to allocating privately owned lands and plots, of lands within the industrial zones for investment activities, urgent expropriations may be made in accordance with the provisions of the Expropriation Law No. 2942. Properties so expropriated shall be registered in the land register in the name of the Treasury.**



## **Acquisition of Real Estate by Foreigners (cont.)**

### **Industrial Zones**

**If expropriation costs of such expropriated properties are met by the budget of the Ministry of Industry and Trade, easement may be established on such properties for a period that is specified under the contract in favour of the investors, in return for its price; and if the expropriation costs were met by the investors, then an easement in favour of investors free of charge may be established. All procedures regarding easement shall be performed by the Ministry of Finance (Article 4).**





## Acquisition of Real Estate by Foreigners (cont.)

### Petroleum Law (Law No. 6326)

- A holder of a petroleum right is entitled to acquire a surface operation license of land (right to use the land) as required for his operation, by agreement or by expropriation if the land is privately owned. If the land is not owned by anybody, surface operation license may be obtained by having the right recorded on the license, operation license or certificate of the investor.

## **Acquisition of Real Estate by Foreigners (cont.) Petroleum Law**

- **If the surface operation license acquired by agreement run for a period of more than three years, then the owner of the privately owned land may also ask the holder of the petroleum right to have the land in question expropriated.**

**In case of expropriation the land shall be owned by the Treasury along with a surface operation license thereon held by the holder of the petroleum right by whom the cost of expropriation will be covered.**



## Acquisition of Real Estate by Foreigners (cont.)

### Petroleum Law

- However, provided no provision to the contrary exists in other laws, the title to privately owned land may also be acquired by the holder of a petroleum right through agreement with the owner (Article 87).

## Acquisition of Real Estate by Foreigners (cont.)

### Secondary residences

- There are no specific provisions regarding acquisition of secondary residences by foreigners.



## Acquisition of Real Estate by Foreigners (cont.)

### New Draft Law

### Restrictions

- **The total area of the real estates and limited real rights on real estates that a foreign real person can acquire all over the country can not exceed 2,5 hectares. Council of Ministers is authorized to increase the area up to 30 hectares.**





## Acquisition of Real Estate by Foreigners (cont.)

### New Draft Law

### Restrictions

- **The Council of Ministers is authorized to determine the places where foreign real persons and companies can not acquire real estates and limited real rights due to public interests and national security.**



## Acquisition of Real Estate by Foreigners (cont.)

### New Draft Law

### Restrictions

- **Foreigners can not acquire real estates that fall in the scope of the Military Forbidden Zones and Security Zones Law No. 2565**



## Transfers Related to the Real Estate

- **All transfers related to real estate by residents and non-residents are free in accordance with Foreign Exchange Legislation.**



## **MILITARY FORBIDDEN ZONES AND SECURITY ZONES**

➤ According to Military Forbidden Zones and Security Zones Law (No.2565), there are **three types of areas** with regard to restrictions on acquisition of real estate:

- ✓ **Military Forbidden Zones,**
- ✓ **Security Zones,**
- ✓ **Other Strategic Areas**





- **Military Forbidden Zones** may be established;  
at the areas, shores and air space around military installations, borders and other areas which are vital for national defense, to maintain their security and confidentiality.

➤ There are **three types of Military Forbidden Zones** as;

✓ **Land Military Forbidden Zones**

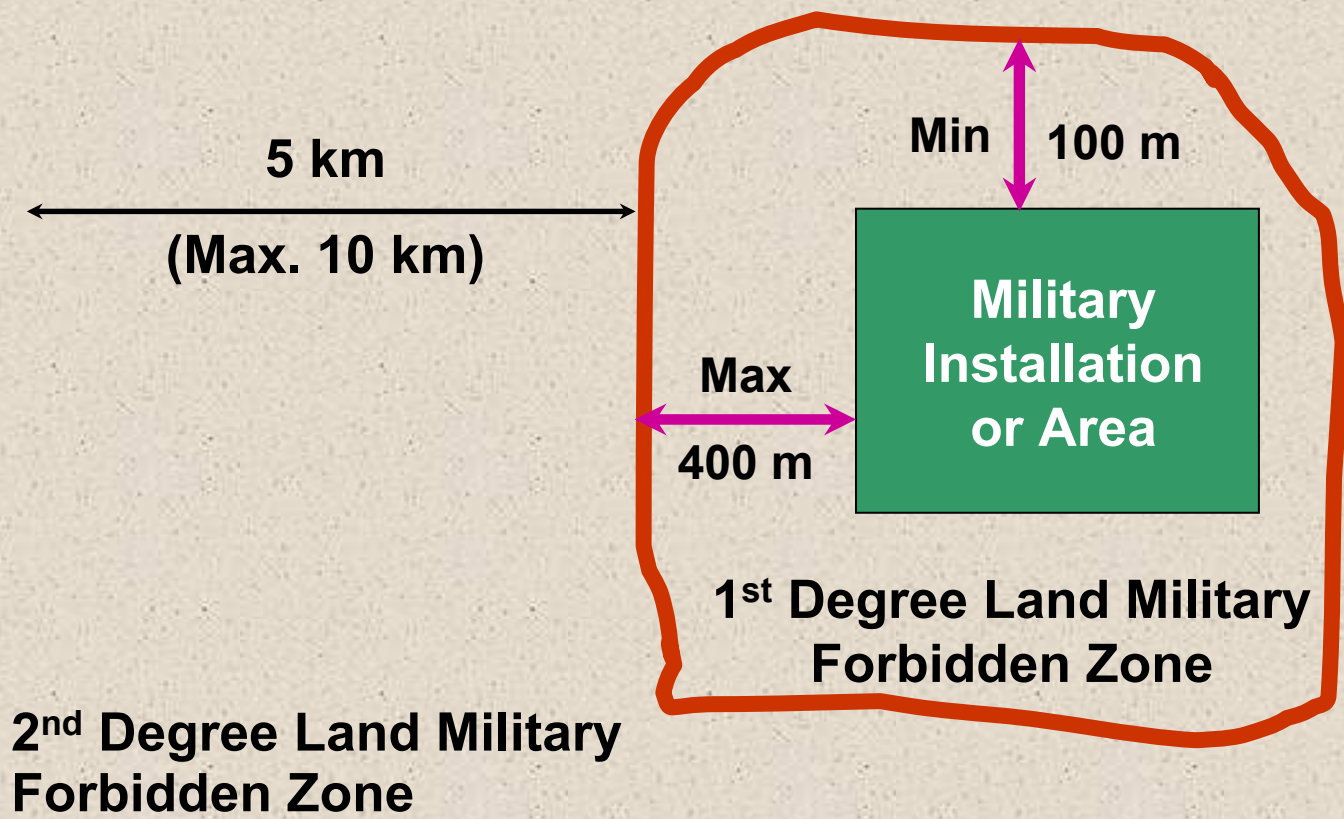
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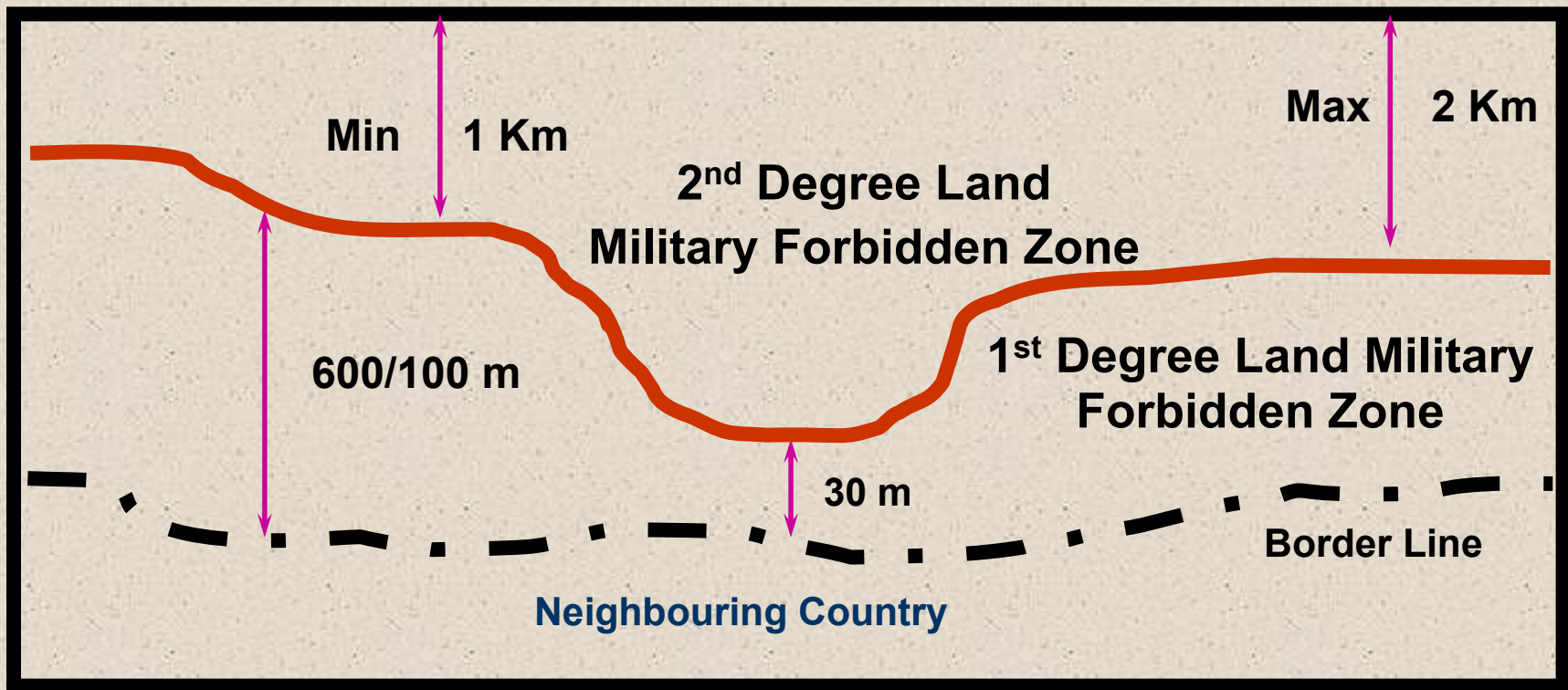
✓ **Naval Military Forbidden Zones**

(First Degree and Second Degree)

✓ **Aerial Military Forbidden Zones**

(First Degree and Second Degree)







➤ According to the Law, the boundaries of the military forbidden zones established particularly at land borders may be narrowed or, in some areas completely abolished by the Decree of the Council of Ministers for activities of public interest regarding national education, culture, tourism and sports.





- ✓ Real estates within the First Degree Land Military Forbidden Zones are expropriated with payment to the owners.
- ✓ However, the real estates within the First Degree Land Military Forbidden Zones established along the land borderlines and the shores may not be expropriated.



- Neither Turkish citizens nor foreigners are allowed to acquire real estate in **First Degree Land Military Forbidden Zones**.
- Turkish citizens may acquire real estate in **Second Degree Land Military Forbidden Zones** while foreign real and legal persons are not allowed.

- **Security Zones** may be established around;
  - ✓ other military facilities and areas,
  - ✓ public or private institutions,
    - which have significant contribution to the national defense and economy,
    - whose destruction, even if partially, or inactivity may bear negative effects on national security or social life.



- **Military Security Zones** are areas, which are not stated as First Degree Land or Naval Military Forbidden Zones and are formed by connecting the points **within up to 400 meters** from the external boundaries of certain military facilities.
- **Special Security Zones**, include all areas surrounding all kinds of settlements and facilities of strategic importance belonging to public or private institutions.



- **Special Security Zones** are generally formed around;
  - ✓ Iron and steel factories,
  - ✓ Refineries,
  - ✓ Petroleum, gas and drinking water pipelines and treatment facilities,
  - ✓ Fixed facilities established along these pipelines and liquidified natural gas (LNG) facilities and depots,
  - ✓ Oil wells and big pumping stations
  - ✓ Arms and military equipment factories and facilities,
  - ✓ Railways, highways, important bridges and gates,
  - ✓ Big ports and airports,





- ✓ **Auxiliary navigation and radar stations,**
- ✓ **Radio, national monitoring, telephone, automatic data processing systems and radio-link centres,**
- ✓ **Dams, important power plants and transformer stations,**
- ✓ **Mine treatment and operation factories of strategic importance,**
- ✓ **Buildings and facilities belonging to the National Intelligence Agency.**



- Real estates belonging to the real and legal persons in the Security Zones can be **expropriated**.
- **Entrance into and settlement** in the expropriated security zones and in the security zone established on the sea room **is forbidden**, except for the Turkish **officials working in the facilities or authorized personnel**.



- Owners of the unexpropriated real estates and other Turkish citizens **are allowed** to settle, conduct agricultural activities and perform their work and art.
- Unexpropriated real estates **can not be sold, transferred and hired out** to foreign real and legal persons.



- Apart from Military Forbidden Zones and Security Zones, the Council of Ministers can pass a decree restricting the foreigners from owning or renting real estate without prior permission in other areas, **which are either very close to Military Forbidden Zones or have strategic importance.**
- The Council of Ministers may also decide for the discharge of the real estates formerly purchased by the real or legal foreign persons in these zones.