

LEGALINK

INVESTMENT AND BUSINESS START UP IN TURKEY

(A) Legal system

1. What is the legal system (i.e. common law system, civil law system or both) in your country?

Turkey has a civil law system.

2. What are the major law courts in your country?

There are four different types of major courts in Turkey which are civil, criminal, administrative and military courts.

Civil courts include civil court of peace, court of first instance and certain specialized courts such as commercial courts, labor courts and family courts.

Court decisions are subject to the review of Court of Appeal if requested by parties.

3. What are the sources of laws (such as constitution, statute law and common law) in your country?

Statute law and constitution are the sources of law in Turkey. Precedents of Court of Appeals are also seen as the source of law by which interpretations of statutory provisions are made in more detail.

4. What is/are the official language(s) in your country?

Turkish is the official language of Turkey.

(B) Foreign investment

5. Are there any restrictions faced by a foreign individual or company when they want to invest in your country? Is an approval or permit required if a foreign individual or company wants to enter a certain industry?

There is no restriction faced by foreign investors and therefore no permit required in case they want to invest in Turkey, unless otherwise is stated by the international agreements in relation to health, safety and environmental measures¹ or the special regulations.

6. Are there any exchange control or currency regulations in your country?

There is no exchange control in Turkey. Foreign currencies can be bought or sold freely without any restriction.

Act No. 1567 dated February 20, 1930 on the Protection of the Value of the Turkish Currency ("The Act on the Protection of the Value of the Turkish Currency") authorises the Council of Ministers to regulate - and for this purpose to issue Decisions on - the import and export of precious metals, instruments and the like within the framework of the protection of the value of the Turkish currency.

7. What grants or incentives are available to a foreign individual or company to encourage investment in your country?

The Decree numbered 2002/3305 on State Incentives in Investments which is effective since January 1, 2012 sets forth four different investment schemes

¹ For instance the investment agreement signed between Turkey and Senegal dated 15.06.2010

providing incentives. These schemes are General Investment Incentives Scheme, Regional Investment Incentives Scheme, Large-Scale Investment Incentives Scheme and lastly Strategic Investment Incentives Scheme. According to these schemes, the incentives provided for foreign investors are as follows:²

Support Instruments	General Investment Incentives Scheme	Regional Investment Incentives Scheme	Large-Scale Investment Incentives Scheme	Strategic Investment Incentives Scheme
VAT Exemption	+	+	+	+
Customs Duty Exemption	+	+	+	+
Tax Reduction		+	+	+
Social Security Premium Support (Employer's Share)		+	+	+
Income Tax Withholding Allowance *		+	+	+
Social Security Premium Support (Employee's Share) *		+	+	+
Interest Rate Support **		+		+
Land Allocation		+	+	+
VAT Refund***				+

* Turkey is divided into six regions as indicated in the chart available through footnote 3. Provided that the investment is made in Region 6 including the cities and

² Available at <http://www.invest.gov.tr/enUS/INVESTMENTGUIDE/INVESTORSGUIDE/Pages/Incentives.aspx>

³ Available at: <http://www.invest.gov.tr/en-US/INVESTMENTGUIDE/INVESTORSGUIDE/Pages/Incentives.aspx>

areas *Ağrı, Ardahan, Batman, Bingöl, Bitlis, Diyarbakır, Hakkari, Iğdır, Kars, Mardin, Muş, Siirt, Şanlıurfa, Şırnak, Van, Bozcaada and Gökçeada.*

**Provided that the investment is made in Region 3, 4, 5 or 6 within the framework of the Regional Investment Incentives Scheme including the cities and areas *Balıkesir, Bilecik, Burdur, Gaziantep, Karabük, Karaman, Manisa, Mersin, Samsun, Trabzon, Uşak, Zonguldak Afyonkarahisar, Amasya, Artvin, Bartın, Çorum, Düzce, Elazığ, Erzincan, Erzincan, Hatay, Kastamonu, Kırıkkale, Kırşehir, Kütahya, Malatya, Nevşehir, Rize, Sivas , Adıyaman, Aksaray, Bayburt, Çankırı, Erzurum, Giresun, Gümüşhane, Kahramanmaraş, Kilis, Niğde, Ordu, Osmaniye, Sinop, Tokat, Tunceli, Yozgat, Ağrı, Ardahan, Batman, Bingöl, Bitlis, Diyarbakır, Hakkari, Iğdır, Kars, Mardin, Muş, Siirt, Şanlıurfa, Şırnak, Van, Bozcaada and Gökçeada.*

***For strategic investments with a minimum fixed investment amount of TRY 500 million.

Apart from the investment incentives mentioned above, there are special investment zones in Turkey, which are the technology development zones, the organized industrial zones and the free zones.

In case the investors operate within the technology development zones, they will benefit from some advantages. For instance, 50% of the employers' share of the social security premiums will be paid by the government for 5 years. Also, the salaries of research and development activities and 10% of the support personnel employed in the zone until December 31, 2023 are exempted from tax payments.

Secondly, for the income and corporate tax payers operating in organized industrial zones; there are certain incentives such as VAT exemption from the acquisition of the investment zones, the real estate duty exemption for five years after the construction and energy support.

Lastly, the legal entities operating in free trade zones also benefit from certain incentives. For example, they are fully exempted from customs duties, the VAT and special consumption tax.

Moreover, there is a specific policy regarding small and medium sized enterprises with the aim of supporting them to improve international cooperation and develop entrepreneurship.

(C) Business vehicles

8. What is the most common form of business vehicle used by foreign investors in your country?

There are four types of legal entities which a foreign investor may utilize when investing in Turkey. These are liaison office; branch office; limited liability company

("LLC"); and joint stock company ("JSC"). The most common forms of business vehicle used by foreign investors are LLCs and JSCs.⁴

Please provide details on:

i. Registration formalities;

Under Turkish Law, upon the registration to the relevant Trade Registry, an LLC or JSC acquires legal personality. There are number of incorporation documents required for the registration including Articles of Association ("AoA"), incorporation statement, bank receipt indicating the payment of the share capital and similar.

Following the submission of required incorporation documents to the Trade Registry, the Trade Registry will issue a certificate of incorporation to the company to certify the title and the date of incorporation of the company. At this stage the company is duly incorporated.

Consecutively, an official from the Tax Authority inspects the registered address of the company in order to issue a tax registration certificate. Moreover, necessary applications to the Social Security Authority and the Municipality are required to be made.

ii. Minimum (and maximum) share capital;

LLCs require a minimum of TRY 10,000.- share capital whereas JSCs require a minimum of TRY 50,000.-. There is no limit as to the maximum share capital of the LLCs or JSCs.

iii. Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities);

Shares can be issued for both cash and non-cash consideration. Most commonly, shares are issued in consideration of transfer of any property with its facilities or patent and trademark rights, licenses and know-hows.

During the incorporation process of both LLCs and JSCs, the Trade Registry requires an expert report including a value assessment of the non-cash consideration. This assessment must be made by the experts appointed by the Court.

iv. Any restrictions on foreign shareholders;

As per the Foreign Direct Investments Code, there are no restrictions regarding foreign direct investments in Turkey by foreign investors, either for legal entities or real persons. Foreign investors are treated as the local investors. In general, foreign investors can establish or acquire companies with their sole capital without prior authorization or approval and they can be appointed as the Board of Director members or managers to the companies.

⁴ Please note that, under Turkish company law, legal provisions regarding JSCs are also applicable to LLCs unless otherwise provided. Therefore explanations below on JSCs are also relevant for LLCs.

v. Management structure and any restrictions on foreign managers;

The management structures in Turkey vary with regard to different types of companies established under Turkish law.

An LLC does not have a Board of Directors but is managed by its managers and shareholders. Unless otherwise stipulated in the AoA of the LLC or there is a shareholders' resolution to the contrary, all shareholders are deemed as managers and are jointly authorized and required to manage and represent the company. On the other hand, all authorities of the shareholders relating to the management of an LLC may be granted to a manager or one of the shareholders. The managers are not required to be Turkish citizens or residents in Turkey. At least one of the shareholders of an LLC must have the right to administer and the authority to represent the company.

In JSCs, management structure mainly consists of the board of directors and shareholders. JSC is managed by its BoD and by managers appointed by the resolution of the General Assembly or by the AoA. The Turkish Commercial Code (the "TCC") allows legal entities to be members to the BoD. Furthermore the BoD might consist of a single director and directors are not required to be shareholders. In addition to the board of directors, JSC may also appoint officers who are entrusted with management power. The officers can be appointed among the members of board of directors as well as the third persons. There are no restrictions on foreign managers or directors and they are not required to be residents in Turkey.

vi. Directors' liability;

Duties and liabilities of Directors are fundamentally regulated under company law provisions of the TCC. Apart from provisions under the TCC, specific duties and civil, administrative and criminal liabilities of Directors are also regulated under various special legislation such as the Turkish Codes of Tax and Accountancy, Competition, Environment, Employment, Intellectual Property, Bankruptcy and Enforcement, Capital Markets and Criminal Code⁵.

Under company law, Directors bear liability towards the company, its shareholders and creditors for losses arising from their willful or negligent failure in their duties and obligations imposed on them by legislation or the AoA of the company. However, Directors can only be held liable for incompliance with the Code, the AoA of the company or corruptions which are within the scope of their control in the company. It is also

⁵ Pursuant to the Turkish Constitutional Law and Turkish Criminal Law, criminal liability is personal, and legal entities cannot be sentenced to criminal sanctions unlike individuals. However, some security measures can be applied to legal entities. In addition, directors can personally be subject to criminal sanctions.

worth mentioning that the new TCC extended the scope and number of criminal liabilities for Directors and introduced more detailed provisions.

In addition, when Directors' own actions are tortuous, third parties are entitled to rely on general provisions of tort under the Turkish Code of Obligations and may also directly pursue a claim against the relevant Directors along with the company.

vii. Parent company liability;

Under Turkish Law, the parent company has the responsibility of acting in the best interest of the subsidiary by making the most favorable decisions that affect the management and financials of its subsidiary company.

In general, the transactions of the parent company which cause loss on the subsidiary are considered contrary to law. In any case (i.e. even if 100% of the shares are owned by the parent company), a parent company cannot give any instructions to the subsidiary exceeding its payment capacity or endangering its existence or resulting the loss of the subsidiary's substantial assets. If the subsidiary company suffers from losses incurred due to the instructions of the parent company then the subsidiary may demand compensation. In the event that such losses are not compensated by the parent company, then the shareholders and the creditors of the subsidiary can file a claim for their losses against the parent company and its Board of Directors.

viii. Reporting requirements (including filing of accounts).

- i. The names, personal details of the directors, share capital, registered office address and similar information, must be filed with the Trade Registry upon formation and upon any subsequent changes.
- ii. If the company is JSC, mergers, demergers, acquisitions, conversion transactions for the type of the company, AoA amendments, general assembly meetings, liquidation of the company, changes in the company's capital, change of the company's registered address are subject to registration with the Trade Registry. In case of LLCs, in addition to the mentioned transactions, share transfers and sole shareholder status are also subject to registration. Failure to comply with such registration requirements may result in monetary fines or cause the liability of the company for the damages. Additionally, other related notifications must be made to Social Security Institution as well as the tax offices, municipalities or to any other governmental institution for which there may be a reporting requirement due to sector-specific legislations.
- iii. There is an annual return requirement for the financial statement of the company and annual activity report of the board of directors under Turkish legal system. TCC also provides an independent auditing requirement for companies which meet certain criteria. If the

company is legally required to comply with the independent auditing requirement yet fails to do so, then the financial statements and the annual activity report of the board of directors will be deemed null and void.

- iv. The companies which are subject to independent auditing are also required to set up a company website for the purpose of putting up the legally required announcements as contents of this website. Failure to comply may result in monetary fines as well as personal liability of the managers and directors of the company.

(D) Employment

9. What are the main laws regulating employment relationships in your country?

Labour Act numbered 4857 and dated May 22, 2003, Labour Health and Safety Act numbered 6331 and dated June 20, 2012 and the regulations of Social Insurance and General Health Insurance Law numbered 5510 and dated May 31, 2006 are the main laws regulating employment relationships in Turkey.

10. Is a written contract of employment required in your country, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

Under Turkish law, in principle there is no legal requirement to enter into a written employment agreement for an indefinite period. However, employment agreements for definite period longer than one year must be in writing. Also, employment agreements of journalists that are subject to Press Labour Law must be in writing.

In cases where there is no written employment agreement, employer is obliged to submit to employee a written document indicating the general and special working conditions, daily or weekly work period, basic salary and salary additions, if any, salary payment period, term of contract (if definite), and the provisions that the parties must observe in case of termination within two months as of the commencement date of the employment.

Employment agreements must be in Turkish if the parties are Turkish.

In principle Turkish laws are applicable. However, as per Article 27 of the Turkish International Private and Procedural Law numbered 5718 and dated May 31, 2006, if there is a foreign element, the parties to an employment agreement can chose a foreign law provided that the chosen law does not limit the rights given to the employee by the Turkish Labour Act.

11. Do foreign employees require work permits and/or residency permits if they work in your country? If so, how long does it take to obtain them and how much do they cost?

Yes, foreign employees must obtain work and residency permits. The work permit becomes valid with the obtainment of a residency permit. In general, it takes four to six weeks to obtain a work permit whereas it takes approximately two weeks to obtain a residency permit.

12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals) in your country?

Not applicable.

13. Are there any employment protection laws (such as minimum wage law and/or maximum working hours law) in your country?

Yes. Turkey has different employment protection laws.

As per the Regulation on Minimum Salary published at the Official Gazette dated August 01, 2004 and numbered 25540 the Commission must determine the amount of the minimum gross salary in two years at latest. However, in practice the Commission determines the gross salary twice a year in July and January. As of July 1, 2013 the minimum gross salary of an employee is TRY 1.021,50.- per month.

As per Labour Act, working hours cannot exceed 45 hours per week. In case working hours exceed 45 hours per week, overtime will be paid at a rate of 1.5 times of the usual salary to the employee. Also, the overtime hours cannot exceed 270 hours in total per year. However, the parties can agree that the salary includes overtime work up to 270 hours per year provided that the employee's salary is more than minimum salary regulated by the state.

Labour Act also provides protection to employees with regard to termination of employment. As per the job security provisions an employer can terminate an employment agreement of an employee only by relying on a valid reason if the employee has been working for at least 6 months at a workplace which has 30 or more employees. Valid reasons can be related with capability or behaviour of the employee, or the requirements of the enterprise, workplace or the work. If the employer does not rely on a valid reason, the employee can file a reinstatement action and can request 8 to 12 months of his/her salary as compensation.

14. Is there any pension system in your country? Is it on a mandatory or voluntary basis? If so, please give details.

Yes. There is a mandatory pension system in Turkey. Under Turkish law, the employer must inform the Social Security Institution at least one day before employing a new employee. However, new established companies can inform the Social Security Institution within one month as of the establishment date. The employer is obliged to pay social security premiums to the Social Security Institution.

Employees who work in Turkey must be hired by local entities established in Turkey as per Turkish laws. In other words, only Turkish companies can be registered to the Social Security Institution.

15. How is the termination of individual employment contracts regulated in your country? Under what circumstances is the dismissal of an employee unlawful?

Under Turkish Labour Law, an employment agreement can be terminated by an employer either by (i) with immediate effect by relying on a just cause, or (ii) providing the employer with a notice period. The termination notice must be in writing.

With regard to termination relying on a just cause, Labour Act provides a list of just causes which can be classified under three categories as follows; (i) reasons of health, (ii) cases which are incompatible with morals, goodwill and similar circumstances, (iii) force majeure. The employer must exercise its right within six working days as of the date on which it is notified of such an act and, in any case, within a period of one year since the occurrence of such act.

The parties of an employment agreement can terminate employment agreement signed for an indefinite period by complying with the notification periods. Employer must give a notification (notice) period when terminating employment agreements. This notification period is determined according to the duration of each separate contract of employment. If the employee has been in employment for a period of less than six months, the notification period is two weeks; if this period is between six and eighteen months, the notification period is four weeks; if this period is between eighteen months and three years, the notification period is six weeks and if it is more than three years, the notification period is eight weeks. However, these periods can be increased by the employment agreements. The employer must pay notification compensation to the employees if it does not comply with the applicable notification periods.

In addition to the notice periods, if the employee has served to employer at least one year, the employer must pay a severance payment at the rate of thirty 30 days' gross salary for each full year of service, based on the employee's most recent gross salary as of the date on which the employment relation between the parties has commenced. Payment must be made pro-rata for partial years of service. However, in any case, the maximum amount to be paid to an employee as severance payment for the time being is TL 3,254.44.- for each year.

16. Are redundancies and mass layoffs regulated in your country? If so, please give details.

The mass layoffs due to economic, technological, structural or similar enterprise, business or work requirements are regulated under Article 29 of Labour Act. Accordingly, employer is obliged to comply with the notification and consultation requirements in cases where it will terminate the employment agreements of (i) at least ten employees out of a total workforce of between twenty and one hundred employees; (ii) at least 10% of the employees out of a total workforce of between one hundred and one and three hundred employees; or (iii) at least thirty employees out of a total workforce of three hundred and one or more employees.

Consultation requirement: The employer is obliged to consult with the relevant trade union representative, if any. The trade union representatives and the employer are required to meet in order to discuss (i) the possible prevention of collective dismissal; (ii) the possible decrease in the number of employees to be dismissed; and (iii) minimising the negative effects of the dismissal.

Notification requirements: In addition to the notification requirement explained above under question 15, employers must notify: (i) relevant trade union representative; (ii) regional directorate; and (iii) the Turkish Employment Agency at least thirty days in advance. Notification must be in writing and it must include: (i) reasons for the termination; (ii) number and the group of employees that are to be dismissed; and (iii) timeframe for the making of the redundancies.

(E) Tax

17. In relation to employees, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Under Turkish law, the rules of taxation for salaries and wages of individuals are provided in the Turkish Income Tax Code⁶ (“ITC”).

In general, residency principle is the basis of taxation in Turkey. Accordingly, an individual who resides in Turkey is liable to pay taxes for all his income which is also referred as “unlimited liability”.⁷

18. Under what circumstances are employees subject to taxation in your country?

If:

(i) the services by the employees are rendered or accounted for in Turkey or (ii) fees, allocations, dividends and the like paid to the chairmen, directors, auditors and liquidators of the corporation situated in Turkey, then the salary of the employees shall be subject to taxation.

19. What income tax or social security contributions must be paid by:

i. Employees?

According to Article 8 of the Tax Procedural Code⁸ and 94 of the ITC, liability of income tax and social security contribution are incurred by the employee; however the person who is accountable for such public receivables before the authorities is the employer.

ii. Employers, in relation to their employees?

According to the Article 94/1/1 of the ITC, employers are obliged to pay taxes in relation to the payments for the employees by means of deduction from their salaries.

According to Article 88 of the Social Security and General Health Insurance Code⁹, employers must pay the social security premiums on behalf of their employees, a part of which is deducted from the employees’ wages.

Unemployment insurance contributions should be paid at %1 by employees, %2 by employers and %1 by government. The premiums incurred by the employees are paid by the employers by means of deduction (Article 46 and 49 of Unemployment Insurance Code¹⁰).

20. In relation to corporations, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Under Turkish law, the rules of taxation for corporations are provided under the Turkish Corporate Tax Code¹¹ (“CTC”).

Likewise the tax principle applicable to individuals, residency principle is the basis of taxation for corporations in Turkey. In this respect, entities having legal or

⁶ Code dated 6.1.1961 and numbered 193

⁷ As a general rule, any person who has stayed in Turkey more than six months in a calendar year shall be deemed as a resident except businessmen, scientists, officials, journalists staying in Turkey for more than six months for any determined and temporary job. Non-residents pay taxes only from the income they generated in Turkey.

⁸ Code dated 10.1.1961 and numbered 213

⁹ Code dated 31.5.2006 and numbered 5510

¹⁰ Code dated 8.9.1999 and numbered 4447

¹¹ Code dated 21.6.2006 and numbered 5520

business center in Turkey are unlimited liable for taxes on the revenues gained in and out of Turkey. On the other hand, entities which have not both legal and business center in Turkey are only liable for taxes on the revenues gained in Turkey.

21. Under what circumstances are incorporations subject to taxation in your country?

Incorporations incur tax debts as a result of their earnings and revenues gained from their transactions and commercial activities.

22. What are the main taxes that potentially applicable to a corporation and what are their tax rates?

In Turkey, the main taxes applicable to a corporation with the below mentioned tax rates are as follows:

- Corporate income tax incurred due to business profits with a rate of 20%¹²,
- Value Added Tax incurred due to the supply and the importation of goods and services with a rate of 18% (in principle)¹³,
- Custom duties, subject to different rates depending on the type of the imported good.
- Stamp taxes, applicable to a wide range of documents, including but not limited to contracts, agreements, notes payable, letters of credit and letters of guarantee, financial statements and payrolls with a rate of the value stated on such documents ranging from 0.189% to 0.948%¹⁴.
- Property taxes paid each year on the tax values of land and buildings with rates varying from 0.1% to 0.6%¹⁵. In the case of the sale of a property, tax at a rate of 2% of such sales value is paid by both the buyer and the seller.

23. Please explain how each of the following is taxed in your country:

i. Dividends paid to foreign corporate shareholders?

According to Article 94/6/b of the ITC, dividends paid to foreign corporate shareholders are subject to taxes at the rate of 15%¹⁶ by means of deduction. The dividends paid to foreign incorporations which receive its dividends through its permanent agency or representative in Turkey are exempted from such tax debt¹⁷.

ii. Dividends received from foreign companies?

Dividends received from foreign companies are exempt from taxation according to Article 5/1/b of the CTC provided that:

- The affiliated company owns at least 10% of the foreign company's paid capital,
- The dividend income is not distributed for one year,

¹² Article 32 of the CTC

¹³ <http://www.gib.gov.tr/index.php?id=830>

¹⁴ Available at

http://www.gib.gov.tr/fileadmin/user_upload/Tebliğler/Damga_Vergisi/56_serno_damga_ver_g_enteb_ek.htm

¹⁵ Article 8 of the Real Estate Tax Code numbered 1319 and dated 11/8/1970

¹⁶ Council of Ministers Decision dated 03.02.2009 and numbered 2009/14592

¹⁷ Company Tax Circular dated 06/01/2006 and numbered 20/2006-1

- Burden of tax rate on the foreign company is at least 15% according to the tax regulations applicable in the relevant foreign country,
- The dividend revenue has to be brought to Turkey until before declaration of tax in Turkey.

iii. Interest paid to foreign corporate shareholders?

Interest arising from owners' capital or thin capital cannot be deducted from the corporation's revenue when determining the amount of corporate tax. This aims ensure that the capital provided by the shareholders cannot be utilized in a way other than dividends¹⁸.

iv. Intellectual property (IP) royalties paid to foreign corporate shareholders?

According to Article 30 of the CTC, periodical payments made to foreign corporations for operating rights and royalties, patents, trademarks and brands, trade names, utility models, graphics and technical drawings, TV films and movies, audio and videos and know-how are subject to taxation by means of deduction.

24. Are there any thin capitalization rules (i.e. restrictions on loans from foreign affiliates) in your country? If so, please give details.

Yes. Interests, foreign exchange differences or other expenses paid or calculated through the thin capital, (where the loans received from the shareholders or related persons exceeds three times of the capital) cannot be deducted from the corporation's revenue.

25. Are there any controlled foreign company rules (i.e. the profits of a foreign subsidiary must be imputed to a local parent company) in your country? If so, please give details.

The revenues of foreign companies affiliating with companies having unlimited liability are subject to taxation if the conditions prescribed under Article 7 of the CTC are met. In this regard fully liable corporations shall own at least 50% of the affiliates' capital or voting rights. Besides following shall be also be met together:

- At least 25% of total revenues of affiliates shall be composed of the passive earnings such as interest, dividends, leasing, and sale of the exchange instruments;
- The tax rate on the affiliate in the foreign company shall be less than 10%,
- The revenue of the affiliate shall exceed 100,000 TRY.

26. Are there any transfer pricing rules (i.e. restrictions on the pricing of transaction between a local entity and a foreign entity) in your country? If so, please give details.

Yes. The purchase/sale of goods or services conducted by legal entities with the related parties or countries/regions -where the tax burden is less than that of Turkey- announced by Turkish Council of Ministers shall be at the price level of the market conditions. In case of non-compliance with this restriction, the amount of income distributed by this means shall be considered as the dividends distributed or the income transferred by the affiliate to headquarter and accordingly will be subject to taxation.

¹⁸ TUKSEL, Volkan; "Non Deductable Expenses in Determination of Company Earning", Yaklasim, October 2011 ,No: 226

27. How are imports and exports taxed in your country?

There are certain taxes payable for imports to Turkey; these taxes include the customs duties, value added tax, stamp tax, anti-dumping tax and private consumption tax. Particularly, those supplying goods and services, importing goods or services, and those required to complete customs formalities in case of transit of goods through Turkey are liable to pay Value Added Tax.

Exports are subject to taxation under the ITC or the CTC and private consumption tax. The ITC under Article 40 states that exporters are allowed to deduct an additional lump sum expense from revenues provided that it does not exceed 0.5% of such revenues. Exports are exempt from Value Added Tax. Stamp tax and duty are also not incurred on the transactions by which foreign exchange is gained¹⁹.

28. Is there a wide network of double tax treaties in your country? If so, please give details.

As of 21.08.2013, double tax treaties have been conducted with 77 countries²⁰. The list of countries party to the referred treaties has a wide range including European countries (Germany, England, Switzerland, France, Holland, Romania, etc.), BAE, South Africa, Japan, USA, etc.

(F) Competition

29. Is there any competition law in your country? If so, please give details.

The Act on the Protection of Competition numbered 4054 and dated December 13, 1994 ("Competition Act") regulates anti-competitive behaviour in order to prevent agreements, decisions and practices preventing, distorting or restricting competition in markets for goods and services, and the abuse of dominance by the enterprises and lastly to ensure the protection of competition by performing the necessary regulations and supervisions to this end.

30. Are restrictive agreements and practices regulated by competition law in your country?

Yes. Article 4 of the Competition Act prohibits any form of agreement (even verbal ones and even those with no anti competitive results) that has the 'aim' to prevent, restrict or distort competition.

31. Is unilateral (or single-firm) conduct regulated by competition law in your country?

Yes. According to Article 6 of the Competition Act, the abuse by one or more enterprises of their dominant position on their own or through agreements with others or through concerted practices, in a market for goods or services in the whole or a part of the country, is deemed as illegal and prohibited.

32. Are mergers and acquisitions subject to merger control in your country?

Yes. The Communiqué numbered 2010/4 concerning the Mergers and Acquisitions Calling for the Authorization of the Competition Board describes the transactions that are considered as mergers or acquisitions.

According to Article 7 of the said Communiqué the transactions where:

¹⁹ The Communiqué dated 19.7.2006 with Official Gazette number 26233

²⁰ <http://www.gib.gov.tr/index.php?id=1055>

a) Total turnovers of the transaction parties in Turkey exceed one hundred million TL, and turnovers of at least two of the transaction parties in Turkey each exceed thirty million TL,

b) Global turnover of one of the transaction parties exceeds five hundred million TL, and at least one of the remaining transaction parties has a turnover in Turkey exceeding five million TL

are required subject to merger control in Turkey.

(G) Intellectual property

33. Please outline the main intellectual property rights that are capable of protection in your country. In each case, please state:

- i. What is the nature of the right?
- ii. How is it protected?
- iii. How is it enforced?
- iv. How long is it protected?

In Turkey, main intellectual property rights are patents, industrial designs, trademarks and copyrights. Geographical indications, utility models, integrated circuit topographies, domain names, trade names, trade secrets and plant varieties are also protected.

a) Patents

i. What is the nature of the right?

Patent right is granted to inventions which are new, which surpassing the current standard for state-of-the-art in a particular industry, and applicable in that industry. Accordingly, the legal requirements to obtain a patent are novelty, inventive step and industrial application.

ii. How is it protected?

The rights conferred to a patent are acquired via registration. The authority for patent registration is Turkish Patent Institute.

In order to maintain a patent registration, the patent annuities must be paid and the patent owner or other person authorized by him must put to use or exploit the patent work within three years as from the date of publication. The second is not a condition for invalidity but the patent may become open to compulsory license requests from 3rd parties. A patent registration can be obtained either via national application or through designations under EPC or PCT procedure. The three types of protection under Turkish patent law are patents which goes through without substantive examination, patents which goes through substantive examination, and utility models.

iii. How is it enforced?

All conflicts related to IP matters including patents (invalidation or infringement) are heard before specialized IP courts which are in Istanbul, Ankara and Izmir. In other cities, the 3rd Chamber of Civil Courts of First Instance (if there are less than 3 Chambers the 1st Chamber) deals with IP related matters.

The patent owner has right to prevent others from copying, manufacturing, selling, distributing, commercializing, importing the patented invention, keeping it in possession for commercial purposes, enlarging the scope of the rights granted by the patent holder, transferring such rights to third persons. Participating in the above listed acts, as well as assisting, inducing or facilitating them, refraining from declaring the source of the unlawfully possessed, manufactured or commercialized products, can also be a ground for a patent infringement.

The patent owner can seek remedies such as preliminary injunctions, the seizure of the products, prevention of manufacturing, sale, importation of the infringing products, removal and destruction of infringing materials, material and moral damages (in case of intentional infringement) and publication of the verdict of the Court.

Please note that, currently criminal sanctions related to patent infringement are not applicable under Turkish Law because Turkish Constitutional Court has cancelled criminal provisions of Decree Law No. 551 pertaining to the protection of patent rights in 2009.

iv. How long is it protected?

Once a patent is granted, the protection starts retrospectively from the application date and lasts for twenty years. The patents which have not gone through examination last for seven years. A utility model lasts for 10 years from the filing date of the application in Turkey.

b) Trademarks

i. What is the nature of the right?

A trademark is a sign that identifies or distinguishes the goods and services provided by an enterprise from those of others. A trademark may consist of all kinds of signs being represented graphically such as words, including personal names, designs, letters, numerals, and shape of the goods or their packaging and by similar descriptive means capable of being published and reproduced by printing. The legal requirements to obtain a trade mark are the capacity of being represented graphically, being published and reproduced by printing and the distinctive character.

ii. How is it protected?

Under Turkish Law, in principle, the rights granted for the protection of a trademark is acquired via registration. A trademark registration can be obtained either via national application or through designations under Madrid Protocol. Although the Law also provides exceptions for the signs that has acquired notoriety due to the prior use as well as for well-known marks in Turkey under Article 6*bis* of the Paris Convention, the exceptional protection is mainly applicable in cancellation/opposition actions but does not extend to trademark infringement claims. For non-registered trademarks, the protection is still possible via unfair competition provisions of Turkish Code of Commerce. Like in patents, the authority which registers trademarks is Turkish Patent Institute.

iii. How is it enforced?

The protection of a trademark is afforded in the event of an act which damages a third party's goodwill, namely an attempt to create confusion regarding the third party's goods, products, activities and commercial enterprise or by abusing the names, marks, signs and similar promotional material used by a third party.

Civil remedies under Turkish IP laws are designed to prevent violations of IP rights and may be resorted to even before a violation takes place. The ultimate purpose of the remedies is to restore the rights holder to the position it was in before the infringement took place. Actions for the cessation and prevention of an infringement stop the infringing activity, while actions to restore the position of the parties aim to eliminate all the results of the infringement and to restore the situation which existed prior to the infringing activity. An action for damages aims to achieve the same purpose monetarily.

Under Turkish Law, criminal remedies against violation of trademark rights are also predicted in the relevant legislation. Pursuant to Article 61/A of the Trademark Decree Law, the production, offer for sale and sale of fake goods shall be punished by between one and three years' imprisonment and a considerable fine.

When an infringer is identified as dealing with counterfeit goods, a complaint can be filed with the local public prosecutor's office, which may then order the police to carry out a criminal search and seizure under a search warrant obtained from the local criminal court. Police officers have the authority to search premises and seize any counterfeit goods, provided the official papers documenting the search and seizure are sent to the local criminal court for approval within 24 hours of the search. Criminal procedure is very effective, as the search and seizure can be carried out within a couple of hours of filing a well-founded application.

iv. How long is it protected?

Once the trade mark application is granted for registration, the protection starts retrospectively from the application date and lasts for ten years. The protection is subject to renewal in every ten years and it is renewable indefinitely. It is not required that the trademark be in use during the period of application or registration. However, if the mark has not been put into genuine use for a consecutive period of 5 years after its registration or if the use is ceased for a consecutive period of five years during the term of protection, third parties can file cancellation actions on the ground of non-use.

c) Industrial designs

i. What is the nature of the right?

An industrial design protects the outer appearance of a product or its ornamentation. The legal conditions, in order obtain a registration for an industrial design, are novelty and individual character and conformity with the public morality or public order.

ii. How is it protected?

The Decree Law No. 554 regulates the provisions for the protection of registered designs. The authority for design registration is the TPI. Industrial designs are registered and issued without a prior examination in respect of novelty and distinctive character. Upon publication of the design in the Turkish Industrial Design Bulletin, third parties are entitled to file oppositions. After the opposition period of 6 months is terminated, the TPI issues a certificate of registration. If third parties fail to file an opposition within the required 6 months deadline from the publication of the industrial design, the cancellation of same can be requested before IP Courts.

There is not a specific protection for unregistered designs in Turkey but the same can be protected under the general provisions for unfair competition. Also, there is

no specific time for the protection of unregistered designs. The owner may claim protection as long as the design keeps the original character within the market.

iii. How is it enforced?

Registered designs grant exclusive authority to their owners. In this respect, the owner have right to prevent others from making, producing, putting on the market, offering, selling, putting to use, importing (or keeping in stock for these purposes) the identical or significantly similar version of the registered design or transferring to third parties or expanding rights acquired by a licensing contract.

iv. How long is it protected?

The protection for a registered design starts from the filing date and lasts five years. It can be renewed for four successive periods of five years, which is for 25 years in total.

d) Copyrights

i. What is the nature of the right?

Copyright protection is granted to original “works” carrying the characteristics of its author. Type of works are listed in the law as scientific, literary, musical, fine art (artistic) and cinematographic.

ii. How is it protected?

Under Turkish law, the registration of copyright is not a legal requirement for the establishment of rights. However for cinematographic and musical works there is a compulsory registration for the purposes of exploitation of rights and facilitating proof of ownership but not for creating any rights. There is also “an optional registration” for other types of works.

The authority for recording and registration of copyrights is the General Directorate of Cinema and Copyrights which is founded under the Ministry of Culture and Tourism. The rules and procedures of recording and registration, the determination of the fees and other issues are set out in Regulation No. 26171 Pertaining to the Recording and Registration of Intellectual and Artistic Works.

iii. How is it enforced?

A copyright infringement action is mostly filed on the basis of unauthorized reproduction, distribution, communication of the work or unauthorized derivative works. Besides this, the author can take action against the infringements to the author’s moral rights, such as the right to disclose the work, the right to attribution to the work and the right to the integrity of the work.

The author can seek remedies such as preliminary injunctions, seizure of the products, prevention of manufacturing, sale, importation of the infringing products, removal and destruction of infringing materials, claim for material and moral damages (in case of intentional infringement), and publication of the verdict of the Court. In addition, criminal remedies, such as raid actions and criminal sanctions are also available in case of copyright infringement.

iv. How long is it protected?

Copyright protection starts from the creation of the work (starting from the first communication of the work to the public) and lasts for 70 years after the author's death.

e) Confidential information (Know-hows and trade secrets)

i. What is the nature of the right?

There is not any specific regulation regarding the confidential information. However in Turkish doctrine, “confidential information” is generally defined as “*any information related to the business of a commercial entity that is intentionally kept secret by its owner as the same creates a commercial advantage and has an independent commercial value.*” We consider that this definition may give a general idea as the legal conditions for the protection of confidential information.

ii. How is it protected?

The main legal instruments for the protection of the confidential information are the “unfair competition” provisions. In addition, depending on the nature of the unauthorized use, Turkish Constitution, Turkish Penal Code, Turkish Labour Law as well as the Code of Obligations may also serve as the grounds for the protection of confidential information. Under Turkish Criminal Code, delivering or disclosing confidential information is considered as a crime which is sanctioned upon complaint.

iii. How is it enforced?

The conflicts arising due to unfair competition are subject to the proceedings before Civil Commercial Courts. The disclosure of the information was due to public order (during a court proceeding etc.), the confidential information has already been disclosed by the owner, the information is not “confidential” itself and the owner’s attitude restricts the free competition, the following remedies can be obtained in actions for unauthorised use of confidential information, preliminary injunctions – preventing the use of confidential information in any means, removal and destruction of the materials including the confidential information, prohibition of further use, claim for material and moral damages (in case of intentional infringement), publication of the verdict of the Court, criminal remedies,-imprisonment of the people involved in the unauthorized use of the confidential information can be listed as the most common defences to actions for unauthorised use of confidential information.

iv. How long is it protected?

In principle, trade secrets can be protected for an unlimited period of time. However, the legislature has set forth a time limitation wherein a lawsuit must be filed by the party who incurred damages as a result of unfair competition. According to Article 62 of the TCC, the Party who incurred damages is entitled to file a lawsuit within one year of learning of the infringing act and within three years of the commitment of the infringing act. However, if the instance of unfair competition act constitutes a crime subject to a longer statute of limitations, the criminal time limitation will be applied to the civil law case.

(H) Marketing agreements

34. Are marketing agreements regulated in your country? If so, please give brief details in respect of the following arrangements:

- i. Agency;
- ii. Distribution; and
- iii. Franchising

Agency agreements are regulated under the TCC in Articles 102 to 123. According to Article 102 of the TCC, agent is defined as “*a person who acts as an intermediary in the*

agreements relating to commercial enterprise or concludes such agreements on behalf of such commercial enterprise in a determined place or territory, on a continuous basis, without having an ancillary role such as a commercial intermediary, commercial representative, salesman and employee”.

It is important to note that Agents could request portfolio compensation from principals if they are exclusive agents and the agency relationship has not been terminated by the principal on a rightful basis.

Distribution and franchising agreements are not regulated under Turkish law but the provisions of the Turkish Obligations Code and the TCC which regulate agreements of continuing nature such as sales agreements, mandate agreements and agency agreements may also be applicable where appropriate.

(I) E-commerce

35. Are there any laws regulating e-commerce (such as electronic signatures and distance selling) in your country? If so, please give brief details.

Procedures and rules regarding the application of electronic signature are regulated in the Code of Electronic Signature dated January 23, 2004 and numbered 5070 (“CES”). Pursuant to Article 5 of the CES a document signed with a secure electronic signature has the same legal effect as a document signed with a scripted signature.

Furthermore, Article 199 of the Civil Procedural Code dated January 12, 2011 and numbered 6100 stipulates that electronic data shall have evidential value provided that it is strong enough to prove the disputed fact.

Regulations regarding distance selling are set forth under the Distance Selling Regulation published in the trade registry gazette dated March 6, 2011 and 27866. According to this regulation, before making a distant selling agreement, the consumer must be provided with information such as; address, name, phone number and other contact information of the seller, tax included cost of the product or service in TRY, conditions of the right of withdrawal, essential qualifications of the product, delivery expenses, payment and delivery conditions.

(J) Data protection

36. Are there any data protection laws in your country? If so, please give brief details.

Under Turkish Law, protection of personal data is not regulated in details.

The Turkish Constitution, Criminal Law and Civil Code set forth general rules governing the recording of, use of and processing of personal data. The draft law on protection of personal data is on the agenda of the Turkish National Assembly since 2002; however such draft law has not yet come into force. Thus, data protection conflicts are subject to general principles of Turkish law.

Pursuant to Article 20(3) of the Turkish Constitution *“Every person has the right to request the protection of his/her personal data. This right includes being informed of, having access to and requesting the correction and deletion of his/her personal data, and to be informed whether these are used in consistency with envisaged objectives. Personal data can be processed only in cases envisaged by law, or by the person’s explicit consent. Principles and procedures on protection of personal data shall be regulated by law.”*²¹ Therefore, in principle, personal data can be recorded and processed upon obtaining person’s explicit consent.

²¹ Available at http://global.tbmm.gov.tr/docs/constitution_en.pdf

As per Article 135 of the Turkish Criminal Code dated September 26, 2004 and numbered 5237, persons who unlawfully keep personal data are subject to penalty of imprisonment starting from 6 months to 3 years. Also according to Article 136 of the Turkish Criminal Code, persons who unlawfully obtain, release, and/or transfer personal data are subject to penalty of imprisonment starting from 1 year to 4 years. Compensation claims in such a case are also reserved.

(K) Product liability

37. Are there any laws regulating product liability and product safety in your country? If so, please give brief details.

Although product liability is not directly regulated under Turkish legal system, there are certain legislations which contain specific provisions on product liability. In that regard, the main legislations regulating product liability and product safety in Turkey are the Law No. 6502 on Protection of Consumers, the Law No. 4703 on Preparation and Implementation of Technical Legislation for Products and also the Turkish Code of Obligations.

Law No. 6502 on Protection of Consumers provides that sellers are obliged to deliver the products in compliance with the sales agreement between them and consumers. A product that is not in line with the agreement of the parties or that lacks objective qualities which it needs to have, is considered as defective. Accordingly, sellers will be strictly liable for having sold defective products. In the event that such liability arises then the consumer may choose to benefit from one of the alternative rights which are (i) to terminate the contract and return the product, (ii) to withhold the product and demand a compensation in ratio of the defect, (iii) to ask for the repair of the defective product free of charge if it will not entail excessive cost, (iv) if possible, to ask for the replacement of the defective product with its equivalent. In addition to that, sellers are obliged to provide a Turkish instruction and guidance manual as well as the labels indicating international symbols and signs of instructions and product safety. In case the product may be hazardous to environment or it may entail any danger to the user, then the seller is also obliged to have a warning provided either in the manual or as inscribed on the product itself. Where such warnings are inscribed on the product, it is mandatory that they are in Turkish. Furthermore, it is forbidden to produce, market, import and export products which may be confused with food products, particularly by children, due to their odor, color, appearance, packaging, labels, volume or size and thus may endanger public health and safety.

Law No. 4703 on Preparation and Implementation of Technical Legislation for Products imposes duties on manufacturers and distributors. Breach of such duties will be subject to respective monetary fines. Law No. 4703 mainly seeks to ensure the conformity to technical requirements established by several government institutions under the secondary legislations and to the global standards for manufacture and distribution of products.

Where the injured party is not a consumer, then the general articles of tort liability governed by the Turkish Code of Obligations will apply. On the other hand, it is also possible to claim for damages where there is a contract between the parties and there is a breach of a contractual obligation to deliver a product free of defects.



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