



Doing Business in Turkey 2022

The 2022 edition of Doing Business in Turkey is your simple but comprehensive guide to understanding the current investment climate and the most important laws regulating investments and commercial activities in Turkey.

The guide features various topics, including the legal landscape, taxation and VAT, customs duties, commercial contracts, competition law, data protection, intellectual property, foreign investment models, real estate ownership and leasehold, and employment.

Turkish Judicial System

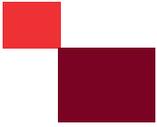
- The Turkish legal system is similar to the legal systems of Continental Europe in many aspects.
- Foreign arbitral awards can be enforced in Turkey if the country where the award was issued is a party to the New York Convention or there is *de facto* reciprocity between Turkey and that country for the recognition of arbitral awards. Turkey limited the applicability of the New York Convention to commercial disputes. Final and binding foreign court decisions can also be recognized and enforced in Turkey if the country of the relevant court signed a bilateral treaty with Turkey for the recognition of court decisions or there is *de facto* reciprocity with the relevant country for such recognition. In the recognition and enforcement lawsuit, Turkish court will not re-examine the merits if the decision does not violate Turkish public policy or relate to a matter within the exclusive jurisdiction of Turkish courts.

Foreign Investments

- Generally, Turkish law provides that foreign investors be treated equally to Turkish investors.
- There is no restriction on foreign shareholding except in a few specific sectors such as media, education and aviation.
- Foreign investors may choose foreign laws and courts to have jurisdiction over their contracts.
- Agreements between two Turkish parties (regardless of whether they have foreign shareholders) must be in the Turkish language and any non-Turkish versions will not be enforceable.

Establishing a Legal Presence in Turkey

- **Establishing Company.** Most foreign investment requiring a permanent legal presence in Turkey proceeds through a locally established company. Local legislation allows several forms of company; however, considering overall advantages and disadvantages, foreign investment generally opts to incorporate either a joint stock company (**JSC**) or a limited liability company (**LLC**). Foreign investment's choice between these two forms depends on a detailed comparison between JSC and LLC, as below:
 - In terms of scope of activity, JSCs may be established for any type of activity, which is not prohibited by law, whereas LLCs may not engage in banking, insurance, financial leasing and other activities limited by law.

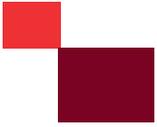


- In terms of minimum capital requirement, it is TRY 50,000 for JSCs whereas it is TRY 10,000 for LLCs.
- In terms of shareholding, local legislation allows single-shareholder JSC and LLC.
- In terms of payment requirement of initial capital, at least 25% of the initial capital of a JSC must be paid prior to incorporation and the remaining 75% must be paid within 24 months following the incorporation date; whereas there is no requirement for the LLCs to pay a certain amount prior to the incorporation and the entire share capital amount can be paid within 24 months following the incorporation date.
- In terms of liability, shareholders are liable to the extent of their capital subscription undertakings, and executives are personally liable for the unpaid public debts (e.g., unpaid taxes or social security premiums) in JSCs. On the other hand, liability regime is slightly different in LLCs: as a general rule, shareholders are liable to the extent of their capital subscription undertakings with an exception stating that shareholders may be liable for unpaid public debts on a pro rata basis to their capital contribution, and executives may also be personally liable for unpaid public debts in LLCs.
- In terms of general assembly, general assembly of a company is composed of its shareholders and the meetings of general assembly are structured in a same way for both JSCs and LLCs. Accordingly, ordinary general assembly meeting must be held each year within three months following the end of the company's fiscal year, during which the shareholders review relevant financial statements, resolve on profit distribution and release the directors. Extraordinary general assembly meetings can be held as necessitated by the operations of the company.
- In terms of board, the board of directors for JSCs and the board of managers for LLCs are entitled to represent and manage the company and it is a mandatory corporate organ for both companies. Local legislation allows single-member boards. In JSCs, members of the board of directors are not obliged to be a shareholder of the company, whereas in LLCs, at least one of the members of the board of managers must be

a shareholder of the company. Neither the members of board of directors in JSCs nor the members of board of managers in LLCs are required to be a Turkish citizens or residents in Turkey, unless otherwise specifically stated in local legislation.

The incorporation procedure in Turkey is almost the same for both JSCs and LLCs; and involves relatively significant paperwork and intense communication with the authorities, and also requires integrated cooperation with institutions such as banks. The preparation of documents is usually the most time-consuming and crucial stage.

- **Establishing Branch Office.** In addition to establishing a company in Turkey, foreign investors may also consider establishing a branch office in Turkey. Branch offices are entirely different structures compare to companies, as below:
 - In terms of scope of activity, branch offices can only engage in activities of its parent company. It cannot provide goods and/or services or engage in any commercial activity, which is not within the scope of services of the parent company.
 - In terms of capital, branch offices may have autonomous capital and accounting to carry out commercial transactions with third parties. While there is no minimum capital requirement for a branch, it is required that the parent company maintains capital sufficient for its day-to-day operations in practice.
 - In terms of dependency to the parent company, although branch offices are registered with the relevant Trade Registry as separate legal entities, they are not totally independent from their parent companies. Branch offices are dependent to the parent company in terms of internal management and it is deemed that they act on behalf of its parent company. Thus, the loss and/or profit arising from the transactions of the branch office belong to the parent company. Parent company assumes the rights and obligations arising from the acts of the branch office.
- **Establishing a Liaison Office.** If the foreign investor is not planning to perform any commercial activity in Turkey, establishing a liaison office that does not have a separate legal personality, can also be considered. In terms of scope of activity, liaison offices are not allowed to



directly engage in any profit generating business. However, it is permitted to carry out activities such as gathering information, conducting market researches, promotion of the products and services of the foreign company, representation and hosting, control and inspection of the suppliers in Turkey with respect to quality and standards and procurement of local suppliers, technical support visiting clients and describing the aspects of the parent company, arranging transfer of documents between the clients and the parent company, and entering into contacts to expand the business opportunities of its parent company, acting as regional management headquarters since these are not considered as commercial activities.

Taxation

- Individuals are subject to income tax between the rates 15% and 40% progressively. Corporate income tax used to be 20%, but increased to 22% for the years 2018 to 2020. Turkey has signed double tax treaties with more than 80 countries.
- A written document with a signature (e.g., contract, undertaking letter, letter of intent) or any other document created in a magnetic medium as electronic data with an electronic signature is subject to stamp tax if the document is signed in Turkey. Agreements signed outside of Turkey (or embassies or consulates in Turkey) will be subject to stamp tax only if the document (i) is submitted to the Turkish authorities; (ii) is assigned or endorsed to others in Turkey; or (iii) the document's provisions are otherwise benefited from in Turkey. Fiscal authorities interpret the term "benefiting from the provisions" in a broad manner. Share purchase agreements recently became exempt from stamp tax.
- In principle, the VAT rate is 18% and the VAT Law provides several tax exemptions (e.g., services in free trade zones, export of goods and services). A reduced VAT rate of 1% or 8% applies for certain deliveries and services listed separately in the VAT legislation.
- Other taxes applicable in Turkey include gift and inheritance tax, banking and insurance transaction tax, resource utilization support fund, special consumption tax, and special communication tax.
- Turkey employs anti-avoidance measures such as transfer pricing, thin capitalization and controlled foreign corporations, as well as

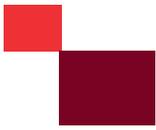
general anti-abuse rules that rely on substance-over-form.

Employment

- If an employer wishes to hire foreign employees, a work permit or a work permit exemption certificate must be obtained before the foreign employees can start working in Turkey. Non-compliance with the requirement to obtain a work permit or a work permit exemption certificate will result in administrative fines applicable to both the employer and the respective foreign employee, and the foreign employee can be deported from Turkey and banned from entering Turkey.
- Ministry of Family, Labor and Social Services applies certain criteria when processing work permit applications of foreign nationals, which the employer must fulfill. For instance, employers are required to employ a minimum of five Turkish nationals in the respective workplace for each foreign national they want to hire.
- According to the International Labor Force Law, statutory managers of limited liability companies who are also shareholders of the relevant company and boards of directors' members of joint stock companies who are also shareholders of the relevant company must obtain work permits to work in Turkey.
- The following are exempted from the requirement of obtaining a work permit: (i) boards of directors' members of joint stock companies who do not reside in Turkey; shareholders of other companies who do not hold managerial positions; and (ii) cross-border service providers whose services in Turkey do not exceed 90 days in a 180-day period. Those who are exempt from the requirement to obtain a work permit must obtain a "work permit exemption certificate" to work and reside in Turkey.
- Unions and pensions related issues pose threats in M&A transaction less frequently than in the rest of Europe

Real Property

- Non-Turkish individuals who are citizens of countries determined by the Council of Ministers can purchase real estate and acquire limited rights in rem subject to certain requirements.



- Non-Turkish legal entities can only own real estate and limited rights in rem within the scope of special provisions of Turkish law, including the Petroleum Law, Tourism Incentive Law and Industrial Area Law.
- Turkish companies with foreign capital and in which foreign nationals or foreign companies own 50% or more shares or have the right to appoint/dismiss persons with management rights, may acquire and use real estate or limited rights in rem to carry out the activities stated in the companies' articles of association after receiving approval from the city governorship where the real estate property is located.

Intellectual Property

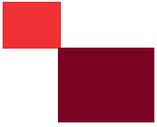
- Intellectual property rights, as a whole, are governed by two different laws and intellectual property disputes are heard before judicial courts, including exceptional courts with intellectual property expertise established in three biggest cities in Turkey.
- Competent local authority for the prosecution of trademarks, patents/utility models, designs and geographical indications is Turkish Patent and Trademark Office, with its swift and up-to-date application of intellectual property law and developed online search and filing platforms.
- Confidential information and trade secrets are not explicitly defined under Turkish intellectual property law. It is not possible to register confidential information or trade secrets in Turkey.
- Turkey is a member of the World Trade Organization and a party to a number of international treaties related to intellectual property, including the Paris Convention, the Hague Agreement Concerning the International Deposit of Industrial Designs (Geneva Act), the Madrid Protocol, the Patent Cooperation Treaty, the Rome Convention, the UPOV Convention, the Berne Convention, the European Patent Convention and the TRIPS Agreement.

Banking

- The Turkish financial sector underwent major structural changes as a result of the financial liberalization program begun in the early 1980s. The abolition of directed credit policies, liberalization of deposit and credit interest rates and liberal exchange rate policies, as well as the adoption of international best standard banking regulations accelerated the structural

transformation of the Turkish banking sector. Since the 1980s, the Turkish banking sector experienced a significant expansion and development in the number of banks, employment in the sector, diversification of services and technological infrastructure.

- The Turkish money markets and foreign exchange markets stabilized in 2001, in large part due to regulatory reform and other governmental actions (including a three-part audit undertaken in 2001 and 2002). The system's transparency improved along with the establishment of an independent supervisory and regulatory framework and new disclosure requirements. The structural changes undertaken strengthened the banking sector and resulted in a more level playing field for banks.
- The Turkish banking industry has undergone significant consolidation over the past decade. As of 31 October 2019, there are 53 banks (including domestic and foreign banks as well as participation banks, but excluding the Central Bank) in Turkey. Thirty-two of these are deposit banks, thirteen are development and investment banks and six are participation banks, which conduct their business under separate legislation and in accordance with Islamic banking principles. Further, there are two banks being managed by the Savings Deposit Insurance Fund.
- The Banking Law permits deposit-taking banks to engage in all fields of financial activities, including deposit collection, corporate and consumer lending, foreign exchange transactions, capital market activities and securities trading. Typically, major commercial banks have nationwide branch networks and provide a full range of banking services, while smaller commercial banks focus on wholesale banking. The main objectives of development and investment banks are to provide medium-and long-term funding for investment in different sectors.
- Turkish banks (including development and investment banks) and branches of foreign banks in Turkey are primarily governed by two regulatory authorities in Turkey, the Banking Regulation and Supervision Agency (BRSA) and the Central Bank. The BRSA is responsible for all banks operating in Turkey, including development and investment banks, foreign banks and participation banks.
- The Central Bank was founded in 1930 and performs the traditional functions of a central bank, including the issuance of bank notes,



implementation of the government's fiscal and monetary policies, maintenance of price stability and continuity, regulation of the money supply, management of official gold and foreign exchange reserves, monitoring of the financial system and advising the government on financial matters. The Central Bank exercises its powers independently of the government. The Central Bank, in conjunction with the government, is empowered to determine the inflation target and adopt a monetary policy in compliance with this target. The Central Bank is the only authorized and responsible institution for the implementation of this monetary policy.

Issuance and Regulation of Securities

- The Borsa Istanbul is Turkey's only securities exchange. It integrates all the exchanges operating in Turkish capital markets under a single roof.
- The Capital Markets Board (CMB) is an independently operated autonomous public body whose principal function is to assist the development of the Turkish securities market, contribute to the efficient allocation of financial resources in the Turkish economy, and ensure adequate protection for investors.
- The CMB sets forth certain requirements for introducing foreign securities into the Turkish market. To offer foreign securities in Turkey, the CMB must approve a prospectus (izahname) written in Turkish containing the required information prior to issuing foreign securities. In particular, foreign securities must not bear any encumbrance, and must be issued in Turkish Lira or a convertible currency recognized by the Central Bank of Turkey.

Currency Regulation

- Persons not residing in Turkey may purchase and sell securities issued by Turkish issuers, if transactions are facilitated through a Turkish bank or brokerage, and the relevant gains and purchase price are transferred through a Turkish bank.
- Funds in Turkish Lira or a foreign currency may be freely transferred abroad through Turkish banks. Turkish banks are required to notify the Central Bank of transfers exceeding USD 50,000 (or its equivalent) within 30 days of the transfer.

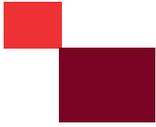
- Up to TRY 25,000 and foreign currency up to the equivalent of EUR 10,000 can be physically taken out of Turkey without any limitation.

Protection of Competition

- All agreements between persons, undertakings, decisions by industry or trade associations and concerted practices that have (or potentially have) as their object or effect the prevention, restriction or distortion of competition regarding a Turkish product or service market or a market segment are prohibited.
- Abuse of a dominant position, whether perpetrated by a single undertaking or several undertakings acting in concert, is also prohibited in accordance with the Competition Law.
- Merger and acquisition transactions resulting in a change of control and exceeding certain turnover thresholds may require the Competition Board's authorization. If the monetary thresholds are met and there is a change of control in the target, the Competition Board's authorization will be required even if the purchaser has no activities in Turkey.

Compliance/Anti-Bribery

- Several Turkish laws contain provisions on anti-corruption and bribery, primarily the Turkish Criminal Code No. 5237, the Law on Declaration of Property and Combating Bribery and Corruption No. 3828, the Law on the Ethics Board for Public Officials No. 5176 and the Civil Servants Ethical Principles and Application Procedures and Principles.
- The consequences of bribery for legal entities are the (i) revocation of their license/permit if (a) a private legal entity abuses its authority arising out of a license/permit granted to it by a public entity and (b) the legal entity's governing bodies or representatives participated in the actions of such entity; and (ii) confiscation of property or material interests, if the conditions under the law are satisfied. Individuals engaged in bribery on behalf a legal entity can be subject to criminal sanctions.
- Anti-money laundering laws impose a number of obligations (e.g., customer identification, suspicious transaction reporting) on parties to combat money laundering.



Customs

- Importing requires no special license or permission. However, to protect public health, public security or public policies, customs authorities may require certain products to have an import license.
- Unless prohibited by international treaties or domestic laws, all goods can be freely exported. Particularly, the items under the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies List and the Australia Group List of Chemical Precursors and military items are subject to export control and licensing in Turkey.
- Under the transit regime, goods may be circulated from a foreign country to another foreign country (between two Turkish border gates); (ii) a foreign country to Turkey; (iii) Turkey to a foreign country; or (iv) a border gate or inland customs office to another inland customs office.

Consumer Protection

- Upon discovering the product's defects, the consumer can: (i) rescind the contract for a full refund; (ii) demand replacement of the good or that the service be performed again; (iii) demand a reduction of the price pro rata the defect; or (iv) demand a free repair. The seller must perform the consumer's selection of remedy.
- The statute of limitations for liability for a defective good or service is two years following the delivery of the good to the consumer or performing the service, even where the defect appears later, unless those liable for the defect have undertaken liability for a longer period. The statute of limitations is five years for real property used for residential and vacation purposes.
- Product manufacturers or importers must establish a minimum number of after-sales service providers or enter into an agreement with already established and working after-sales service providers. The number of these after-sales service providers depends on the type and requirements of the good.
- If an agreement is drafted by one party and not negotiated with the counterparty, its provisions would constitute standard terms and conditions. Provisions to the detriment of the counterparty can only be valid upon expressly informing the counterparty and obtaining their consent to such

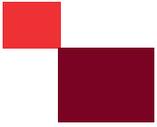
provisions. The counterparty must be provided with sufficient time and opportunity to review the content of the standard terms and conditions, otherwise provisions to the detriment of the counterparty are deemed invalid.

Data Protection

- Law No. 6698 on the Protection of Personal Data (the Data Protection Law) entered into force in April 2016 as the first general personal data protection law of Turkey, harmonizing Turkish data protection law with the EU Directive 95/46, with certain differences.
- The Data Protection Law sets forth obligations for data controllers mainly with regard to personal data processing, cross-border data transfers, and data security.
- The Data Protection Authority, established in January 2017, is the enforcement agency of the Data Protection Law. The Data Protection Authority issued the secondary legislation on personal data deletion, data controllers' registry, notification obligation and principles of the application to the data controller, together with guidelines and decisions.
- A large number of organizations have undertaken data privacy compliance programs to bring their personal data processing activities in line with the Data Protection Law and registered to the data controllers' registry, which also applies to foreign data controllers.
- The Data Protection Authority has fined more than 20 companies to date, and the total amount is approximately TRY 7.700.000 (approximately USD 1,350,000).

Pharmaceuticals and Healthcare

- In order to be sold in the Turkish market, industrially manufactured or imported medicines for human use must have marketing authorization.
- If a medicinal product is unavailable in Turkey but the Health Ministry approves its use for a patient, it can be procured from abroad (commonly known as a pre-license sale). If the medicinal product already exists on the Permitted Medicines List, no application to the Health Ministry is necessary.
- In principle, promotional activities to the general public can only be carried out for non-prescription medicinal products with marketing authorization in Turkey. Promotional activities for healthcare



professionals pertaining to medicinal products without marketing authorization during international conferences convened in Turkey are exempt from this prohibition.

- Recently, the Social Security Institution delisted several pharmaceuticals from the reimbursement list to compel multinational companies to commence local production as part of governmental plans to contain burgeoning healthcare expenses and eventually decrease trade deficit.

Telecommunications

- Turkish telecommunications legislation is similar to that of the EU. The majority of services that necessitate an authorization/license in the EU also fall within the scope of such requirements in Turkey.
- The provision of electronic communications services, operation of electronic communications networks and installation of electronic communications infrastructure are activities subject to authorization. There are two types of procedures for authorizations: authorization by notification and the right-of-use procedure.

All of the information included in this guide is for informational purposes only and may not reflect the most current legal and regulatory developments, judgments or settlements. This information is not offered as legal or any other advice on any particular matter.

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